[NOT YET SCHEDULED FOR ORAL ARGUMENT]

No. 14-5203

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Watervale Marine Co., Ltd., as owner of the M/V AGIOS EMILIANOS, et al.,
Plaintiffs-Appellants,

Mercator Lines (Singapore) Pte, Ltd., as owner of the M/V GUARAV PREM, et al.,
Plaintiffs-Appellees

v.

United States Department of Homeland Security and United States Coast Guard,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEES

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici.

Plaintiffs in the district court and appellants in this Court are Watervale Marine Co., Ltd, Ilios Shipping Company, S.A., Achillea Navigation Corp., and Cleopatra Shipping Agency Ltd.

Plaintiffs in the district court who are not parties to this appeal were Mercator Lines (Singapore) PTE, Ltd., Target Ship Management PTE, Ltd., Bulkers Holding, Inc., and Odysea Carriers S.A.

Defendants in the district court and appellees in this Court are the United States Department of Homeland Security and the United States Coast Guard.

There were no amici in district court.

B. Rulings Under Review.

The ruling under review is the district court's order of July 18, 2014 (Ketanji Brown Jackson, J.), granting the defendants' motion for summary judgment.

C. **Related Cases**.

The case on review has not previously been before this Court or any other court. Counsel for appellees is not aware of any other pending related cases.

s/*Anne Murphy*
ANNE MURPHY

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GLOSSARY

Add. ..... Addendum

APA ..... Administrative Procedure Act

APPS ..... Act to Prevent Pollution from Ships

Br. ..... Plaintiffs-Appellants' Opening Brief

Customs..... United States Customs and Border Protection

JA ..... Joint Appendix

LOS Convention..... United Nations Convention on the Law of the Sea

MARPOL..... International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, as modified by the Protocol of 1978, opened for signature Feb. 17, 1978

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BRIEF FOR THE APPELLEES

INTRODUCTION

In this action under the Administrative Procedure Act ("APA"), the owners and operators of foreign-flagged oceangoing bulk carriers challenge the scope of the Department of Homeland Security's statutory authority to negotiate conditions for granting vessels clearance to depart from the United States. When *M/V Agios Emilianos* and *M/V Stellar Wind* arrived in the United States, the Coast Guard found

evidence of environmental crimes aboard the ships. The Coast Guard could have detained the ships indefinitely to ensure that they (and the evidence and witnesses aboard) would remain within the jurisdiction of the United States federal court during a criminal investigation. Instead, the Coast Guard determined that it would allow the ships to resume their voyages, upon "the filing of a bond or other surety satisfactory to the Secretary" of Homeland Security, 33 U.S.C. § 1908(e), while the criminal proceedings were pending.

Generally, the Coast Guard requires a "satisfactory" security under Section 1908(e) to be a fully effective substitute for the presence of the vessel. The security agreement must (1) guarantee that money will be available in the United States to pay any money penalty ultimately assessed, and (2) retain jurisdiction over the responsible parties in the criminal case and secure access to key witnesses and documents necessary to the prosecution. The Coast Guard thus negotiates with vessel owners and operators for a surety that includes both non-monetary and monetary conditions before a ship is cleared to leave the United States. Here, the owners and operators of the *Agios Emilianos* and the *Stellar Wind* negotiated satisfactory departure

conditions and the ships sailed away. Later, the vessels' operators pleaded guilty to federal crimes and admitted that their crews had intentionally bypassed mandatory anti-pollution equipment to discharge oily waste directly into the sea.

The vessel operators also brought this action under the APA, contending that the Coast Guard lacks statutory authority to require non-monetary departure conditions, such as an agreement to submit to the jurisdiction of the United States criminal court. The district court held that Congress in Section 1908(e) committed to the Coast Guard's discretion absolute authority to determine — within constitutional bounds — what departure conditions would be "satisfactory to the Secretary," and it held that it lacked authority under the APA to review the specific departure conditions granted to the *Agios Emilianos* and the *Stellar Wind*.

STATEMENT OF JURISDICTION

This is an APA challenge to the Department of Homeland Security's implementation of a provision of the Act to Prevent Pollution from Ships ("APPS"). The district court asserted federal question jurisdiction over plaintiffs' action to vacate security agreements and for

injunctive relief. See 28 U.S.C. § 1331. But the district court lacked jurisdiction, as explained further below.

This Court has jurisdiction under 28 U.S.C. § 1291 to review the district court's final judgment.

The appeal is timely. The district court entered judgment on July 18, 2014. The notice of appeal was filed on August 15, 2014, within the sixty-day period allowed under Federal Rule of Appellate Procedure 4(a)(1)(B).

STATUTE AT ISSUE

33 U.S.C. § 1908(e) provides as follows:

> (e) **Ship clearance or permits; refusal or revocation; bond or other surety**
>
> If any ship subject to the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this chapter, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 60105 of Title 46. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

QUESTIONS PRESENTED

I. Whether plaintiffs, whose vessels departed the United States under security agreements between the vessel operators and the Coast Guard, lack standing to pursue their claims for injunctive relief and to vacate the security agreements (and whether the expiration of the agreements renders the vacatur claim moot).

II. Whether departure conditions negotiated under 33 U.S.C. § 1908(e) are unreviewable under the APA because Congress, in providing that the Department of Homeland Security "may" allow a vessel to obtain a departure clearance "upon the filing of a bond or other surety satisfactory to the Secretary," committed to the agency's discretion by law decisions about whether and when a vessel should be granted clearance to leave the United States.

STATEMENT OF THE CASE

1. Facts

A. Statutory Background: The United States' Treaty Obligations To Prevent Pollution At Sea And Its Domestic Law Implementing The Treaties

i. The United States is a party to the International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, as modified by

the Protocol of 1978, opened for signature Feb. 17, 1978, 1340 U.N.T.S. 62, 184 (1983) ("MARPOL"), a multilateral international treaty that imposes strict pollution controls upon oceangoing vessels. MARPOL establishes oil pollution standards for shipping worldwide.[1] One hundred and fifty-three countries, representing almost 99% of the world's shipping tonnage, have signed and ratified the treaty. See Int'l Mar. Org., *Status Of Multilateral Conventions And Instruments In Respect Of Which The International Maritime Organization Or Its Secretary-General Performs Depositary Or Other Functions (as at 12 February 2015)* 102-08.[2]

In implementing MARPOL, Congress recognized that tanker pollution "of the marine environment ha[d] been a grave concern of the United States for a number of years." H.R. Rep. No. 96-1224, at 4 (1980). Unlawful "operational discharges" put far more oil into the world's oceans than do accidental discharges, accounting "for about 85 percent of all the oil entering the oceans from marine transportation

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[1] Relevant provisions of MARPOL are reproduced as an Addendum to this brief.

[2] *Available at* http://www.imo.org/About/Conventions/StatusOfConventions/Documents/Status%20-%202015.pdf.

operations." *Id*. Significant provisions of MARPOL address these intentional and damaging discharges. See 1340 U.N.T.S. 62, 197 (1983) (Annex 1); RESOLUTION MEPC.117(52) (adopting Revised Annex 1).

The United States' domestic implementing legislation for MARPOL is the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. § 1901 *et seq*. APPS directs that the Secretary of Homeland Security "shall administer and enforce" MARPOL itself, as well as statutes and regulations designed to preserve the marine environment. 33 U.S.C. § 1903(a).[3] See also 33 C.F.R. subch. O, pt. 151, subpt. A (Coast Guard implementing regulations).

ii. MARPOL limits oil pollution from vessel operational discharges by prohibiting vessels from discharging dirty bilge water directly into the ocean. "'Bilge water' is the mixture of oil and water that accumulates in the 'bilge'—or bottom—of a ship." *United States v. Pena*, 684 F.3d 1137, 1142 n.2 (11th Cir. 2012). "All of the oil, fuel and other liquids that drip or leak from machinery during the ship's normal operation, and any seawater that leaks into the ship, ultimately flow

[3] As used in APPS, the term "Secretary" means Secretary of the Department of Homeland Security. See pg. 49, below.

downward into the bilge." *Ibid.* Although the accumulated dirty bilge water must periodically be discharged "so that it does not rise to a level where it endangers the safety of the vessel and its crew," *ibid.,* releasing bilge water directly into the ocean poses obvious, serious environmental hazards.

MARPOL accordingly requires vessels to clean their bilge water before discharging it into the sea. See MARPOL, Annex 1 (Add.1).[4] MARPOL specifies particular practices for cleaning bilge water; each vessel over 400 tons "shall be fitted with oil filtering equipment" that "will ensure that any oily mixture discharged into the sea after passing through the separator or filtering systems has an oil content not exceeding 15 parts per million." MARPOL, Annex 1, Reg. 14(1), (6) (Add. 19, 20). See also *id.*, Reg. 15 (Add. 20-22) (regulating discharges); 33 C.F.R. § 155.360 (limiting discharges to an oil content of 15 parts per million).

MARPOL further requires vessels to document their discharges and transfers of bilge water and other oily substances. Each ship must

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[4] Alternatively, ships may store their bilge water in holding tanks until the oily waste can be discharged to reception facilities ashore. See 33 U.S.C. § 1905 (requiring appropriate facilities in the United States).

keep an "Oil Record Book" in which it records discharges of bilge water into the sea. See MARPOL, Annex 1, Reg. 17 (Add. 22-23); see also *id.* App. III (Add. 24-29) (required MARPOL form for Oil Record Book). Every entry in the Oil Record Book "shall be signed by the officer or officers in charge of the operations concerned and each completed page shall be signed by the master of ship." *Id.* at Reg. 17(4) (Add. 23). See also 33 C.F.R. § 151.25 (implementing regulations for maintaining the Oil Record Book).

Complying with MARPOL is a significant expense for the shipping industry, and owners and operators can cut their costs appreciably by bypassing the pollution-control equipment and dumping their oily waste overboard. See generally OECD, *Competitive Advantages Obtained by Some Shipowners as a Result of Non-Observance of Applicable International Rules and Standards* (1996).[5]

iii. The States parties to MARPOL have "undertake[n] to give effect" to the protocol and its Annexes, "in order to prevent the pollution

[5] *Available at* http://www.oecd.org/sti/transport/maritimetransport/reportonthecompetitiveadvantagesobtainedbysomeshipownersasaresultofnonobservanceofapplicableinternationalrulesandstandards.htm.

of the marine environment by the discharge of harmful substances or effluents containing such substances in contravention of the Convention." MARPOL, Art. 1, 1340 U.N.T.S. at 184. Thus, "[a]ny violation of the requirements" of MARPOL "within the jurisdiction of any Party * * * shall be prohibited and sanctions shall be established therefor under the law of that Party." *Id.* at Art. 4(2), 1340 U.N.T.S. at 186. The penalties imposed by a State party's domestic law must be "adequate in severity to discourage violations" of MARPOL. *Id.* at Art. 4(4), 1340 U.N.T.S. at 186. The States parties have further bound themselves to enforce MARPOL "using all appropriate and practicable measures of detection and environmental monitoring," and "adequate procedures for * * * accumulation of evidence." *Id.* at Art. 6(1), 1340 U.N.T.S. at 187.

Under the United States' implementing legislation, "[a] person who knowingly violates the MARPOL Protocol," APPS, or the implementing regulations commits a felony and is subject to potential criminal prosecution. 33 U.S.C. § 1908(a). A ship that contaminates the ocean in violation of MARPOL can be held liable *in rem*. *Id.*

§ 1908(d). APPS authorizes civil penalties against polluters as well. See *id.* § 1908(b).

iv. Environmental crimes are difficult to detect and prosecute. Because illegal discharges of dirty bilge water often occur in the open ocean, MARPOL and APPS prosecutions often focus upon the vessels' failure to maintain and present an accurate Oil Record Book in the United States. Although MARPOL requires every vessel's Oil Record Book to document the movement of all oil and oily waste around the ship, a vessel engaged in illegally discharging pollutants directly into the sea ordinarily does not record those discharges in the Oil Record Book. A vessel arriving in a U.S. port that presents a false Oil Record Book violates MARPOL and the implementing regulations. See MARPOL, Annex 1, Reg.17 (Add. 22-23); 33 C.F.R. § 151.25; see generally *United States v. Ionia Management S.A.*, 555 F.3d 303, 307-309 (2d Cir. 2009) (per curiam)*; United States v. Jho*, 534 F.3d 398, 404 (5th Cir. 2008) ("[T]he 'gravamen' of the [criminal] action was 'not the pollution itself, or even the Oil Record Book violation occurring at that time, but the misrepresentation in port.'").

Another complication in the prosecution of environmental crimes is the transient nature of vessels' visits to the United States. Vessels are present in ports of the United States for only the brief periods needed to load and unload their cargo, and they then sail out of the reach of U.S. jurisdiction—taking with them the evidence, potential witnesses, and the defendants themselves. The United States' jurisdiction to prosecute a foreign-flagged vessel is based upon the physical presence of the vessel in a United States port, and the United States accordingly loses jurisdiction over the vessel when she sails. See generally *Mali v. Keeper of the Common Jail*, 120 U.S. 1, 11 (1887) ("It is part of the law of civilized nations that, when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes.").

The APPS addresses this problem by authorizing the Coast Guard to keep a ship in port if MARPOL violations are reasonably likely to have been committed on board:

> [I]f reasonable cause exists to believe that [a] ship [subject to MARPOL], its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 60105 of Title 46.

33 U.S.C. § 1908(e). Under 46 U.S.C. § 60105, a ship must obtain customs clearance from the Secretary of Homeland Security before it can leave a port of the United States.[6] If the ship's clearance is withheld, the vessel cannot leave port and it remains within the jurisdiction of the United States.

As an alternative to keeping a vessel in port, Section 1908(e) grants the United States discretion to negotiate a surety arrangement that will allow the vessel to resume her voyage under conditions "satisfactory to the Secretary" of Homeland Security. Specifically, the statute provides that a departure "[c]learance may be granted upon the filing of a bond or other surety satisfactory to the Secretary." 33 U.S.C. § 1908(e). The Coast Guard, exercising authority delegated by the Secretary, see 33 C.F.R. § 151.07 and Add. 31, ordinarily negotiates with the vessel for both a monetary bond, to secure the payment of any penalties ultimately imposed, and for non-monetary conditions, such as agreements to submit to the jurisdiction of the courts of the United

[6] While 46 U.S.C. § 60105 has been amended to specify that the Department of Homeland Security must now issue the clearance, 33 U.S.C. § 1908(e) has not yet been amended correspondingly. See pg. 49, below (detailing the statutory changes).

States and to ensure that witnesses will be cared for until they are needed to testify. See, *e.g.*, *Angelex Ltd. v. United States*, 723 F.3d 500, 503 (4th Cir. 2013). These conditions serve as an effective substitute for the vessel's presence and they allow the criminal prosecution to proceed after the ship has left United States waters.

Congress in APPS authorized an after-the-fact remedy for ship owners who believe that a departure clearance was unreasonably withheld. Under 33 U.S.C. § 1904(h), "[a] ship unreasonably detained or delayed by the Secretary acting under the authority of this chapter is entitled to compensation for any loss or damage suffered thereby." See also *id.* § 1910 (authorizing suits by persons "adversely affected" by certain actions taken under APPS).

B. The guilty pleas to crimes committed aboard the M/V Agios Emilianos and the M/V Stellar Wind

i. The *M/V Agios Emilianos*

Plaintiff Ilios Shipping Company S.A. ("Ilios") owns and operates the *Agios Emilianos,* a 36,573 gross ton oceangoing bulk carrier cargo ship registered in Cyprus. JA 238. The *Agios Emilianos* was equipped with an Oily Water Separator, capable of detecting concentrations of oil of more than 15 parts per million in waste water and of preventing such

waste from being discharged overboard, to allow the vessel to comply with MARPOL's prohibition against discharging contaminated bilge waste into the sea. See JA 239. The *Agios Emilianos* also had a required auxiliary incinerator for burning off oily engine-room sludge, another dangerous contaminant that is a byproduct of operating the ship's Oily Water Separator. See JA 239-240.

In early March 2011, the Second Assistant Engineer on the *Agios Emilianos* wrote a letter to Ilios, the ship's operator, telling Ilios that the ship's pollution-control equipment, including the Oily Water Separator and the auxiliary incinerator, were being bypassed, and that false sounding tubes were being used to measure the contents of the tanks containing fuel and diesel oils. JA 239-240. The *Agios Emilianos*'s Chief Engineer had indeed "directed lower level crewmembers to hook up the hoses and empty the bilge and sludge tanks during the evening while the vessel was at sea," so that "oily bilge waste and sludge" were "discharged directly over the side of the vessel into the sea." JA 240. The Chief Engineer, moreover, did not record these discharges in the Oil Record Book. See *ibid.* Instead, he falsely recorded that the ship's pollution-control equipment was being used.

See *ibid.* These activities were discovered when the *Agios Emilianos* called at the Port of New Orleans.

In December 2011, Ilios pleaded guilty to knowingly failing to maintain an accurate Oil Record Book, a violation of 33 U.S.C. § 1908(a). JA 225-230. It agreed to pay a total criminal monetary penalty of $2,000,000.00. JA 227. The company also agreed to implement an Environmental Compliance Plan, and to refrain from acting against officers and crew who had co-operated with the Coast Guard in bringing the criminal conduct to light. JA 228.

ii. The *M/V Stellar Wind.*

Appellant Cleopatra Shipping Agency, Ltd. ("Cleopatra"), a Greek corporation, operates and manages the Liberian-registered bulk carrier *M/V Stellar Wind* ("*Stellar Wind*"). While the *Stellar Wind* was sailing from Spain to the United States in August 2011, the Chief Engineer bypassed the ship's Oily Water Separator using a hose and discharged "bilge water and other oily waste directly into the ocean * * *." JA 247. The Chief Engineer hid the hoses and other evidence of the crime. Further, the Chief Engineer did not record the illegal discharges in the *Stellar Wind's* Oil Record Book. Rather, he "made three false entries"

in the record book, "indicating that the [Oily Water Separator] was used to discharge when in fact it was not." *Ibid.*

Cleopatra, which employed the Chief Engineer, pleaded guilty to failing to maintain an accurate Oil Record Book in violation of 33 U.S.C. § 1908(a). It agreed to pay a $300,000 fine and to implement an environmental compliance program.[7]

C. The security agreements that permitted the Agios Emilianos and the Stellar Wind to leave port

By the time the operators of the *Agios Emilianos* and the *Stellar Wind* pleaded guilty, the ships, which were briefly detained when the evidence of wrongdoing was first discovered, had long since left New Orleans. The *Agios Emilianos* received its departure clearance and left New Orleans on May 7, 2011, after ten days in port, and Ilios's plea

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[7] In district court, APA challenges were brought on behalf of the owners and operators of two additional vessels, the *M/V Gaurav Prem,* operated by Target Ship Management PTE, Ltd., and the *M/V Polyneos*, operated by Odysea Carriers, SA. The operators of both vessels pleaded guilty to violating 33 U.S.C.§ 1908(a) and each paid a fine of $1,200,000. See *United States v. Target Ship Management PTE, Ltd.*, No. 11-cr-368 (S.D. Ala.), Dkt. No. 249; *United States v. Odysea Carriers, S.A.*, No. 12-cr-105 (E.D. La.), Dkt. No. 18. The owners and operators of the *M/V Gaurav Prem* and the *M/V Polyneos,* however, did not appeal from the district court's judgment in this civil action, and they are not parties to this appeal.

agreement was filed with the district court more than seven months later, on December 13, 2011. JA 007 n.5, 225. The *Stellar Wind* left on September 20, 2011, five days after she had arrived, and almost a year before Cleopatra entered its guilty plea on September 12, 2012. JA 007 n.5, 231-236.

Although the United States would ordinarily have lost its ability to prosecute crimes committed aboard the *Agios Emilianos* and the *Stellar Wind* when the ships were no longer in United States waters, the Coast Guard ensured before the ships sailed that the criminal proceedings would not be imperiled. The Coast Guard invoked its statutory authority to allow the vessels to resume their voyages "upon the filing of a bond or other surety satisfactory to the Secretary," 33 U.S.C. § 1908(e), and in negotiating with the owners and operators for an acceptable surety, the Coast Guard made clear that a "satisfactory" agreement would include non-monetary undertakings that would allow the criminal proceedings to move forward after the vessels sailed. The Coast Guard negotiated for financial undertakings in the form of bonds, to provide funds to satisfy any financial penalties levied in the criminal proceedings. In addition, vessel interests would have to waive

objections to the criminal court's jurisdiction to prosecute them; to stipulate that the Oil Record Book and other relevant documents seized from the vessels were authentic; and to leave behind certain crewmembers who were key witnesses to the crimes, paying them wages, housing and transportation costs, and encouraging them to co-operate with the criminal investigation. See JA 087-098, 122-131.

After negotiations with the Coast Guard, the owners and operators of the *Agios Emilianos* and the *Stellar Wind* agreed to non-monetary and monetary conditions upon the issuance of their departure clearances from the port of New Orleans. JA 009. The *Agios Emilianos* posted a $1,125,000 bond, while the *Stellar Wind* put up $500,000. JA 009 n.6. Both vessels also agreed to the non-monetary conditions that would allow the criminal investigations to proceed.

After each ship sailed, her owner and operator asked the Coast Guard to reconsider the conditions set for clearance. See JA 009 n.6; see also 46 C.F.R. ch.1, subch. A, pt.1, subpt. 1.03; 33 C.F.R. § 160.7 (administrative appeals procedures). The Coast Guard reaffirmed its earlier decision.

2. Prior Proceedings

The owners and operators of the *Agios Emilianos* and the *Stellar Wind*, together with the owners and operators of two other vessels, filed this action in district court, challenging the Coast Guard's right to negotiate non-monetary departure conditions. The complaint asked the district court to vacate the security agreements and to enter an injunction prohibiting "the Coast Guard from demanding anything more than a surety bond or other financial surety for the granting of a departure clearance for any vessel" being investigated for violations of the anti-pollution laws. JA 191. The parties filed cross-motions for summary judgment.

The district granted summary judgment to the Department of Homeland Security and the Coast Guard. The court held that because 33 U.S.C. § 1908 "commits entirely to the agency's discretion the matter of when and under what circumstances the Coast Guard may grant departure clearance to a vessel detained under that statute," JA 002, the court could not review the security agreements that allowed the *Agios Emilianos* and the *Stellar Wind* to sail.

The district court acknowledged the APA's general presumption favoring judicial review of administrative action, but it explained that the APA explicitly withdraws review "if the challenged agency action concerns a matter that is * * * 'committed to agency discretion by law.'" JA 015 (quoting 5 U.S.C. § 701(a)(2)). The court held that the Coast Guard's decision to accept a specific set of departure conditions does not fall within any category of administrative action that this Court has held to be inherently unreviewable. JA 025-026. It held, however, that Section1908(e), through its language and structure, committed departure-clearance conditions to the Coast Guard's discretion by law, and that APA review of those conditions was accordingly unavailable. JA 026-042.

The district court held that it would "likely" hold that Section 1908(e) authorizes only financial departure conditions if "the only indicia of Congress's intent regarding the scope of the agency's discretion * * * was the phrase 'bond or other surety satisfactory to the Secretary'" of Homeland Security. JA 028. In the court's view, the "only 'bond or other surety' that the Secretary can find satisfactory as a condition of release is a *financial* surety * * * ." JA 029. But the court

explained that in addition to allowing the Coast Guard to negotiate the financial terms of any bond, Section 1908(e) permits "the Coast Guard to deny departure clearance altogether, or to require some additional conditions" before allowing a ship to sail. *Ibid.*

The district court held that Section 1908(e) "provides no standards for a court to use to determine whether the agency has improperly continued to withhold clearance" even if the financial elements of a bond agreement have been negotiated. JA 30. The court pointed out that Congress provided that the vessel's clearance "shall" be revoked or withheld when there is reason to believe that an environmental crime has been committed, whereas a departure clearance "may" later be granted. See *ibid.* Congress's use of both mandatory and permissive terms in the same provision "strongly indicates that the question of release remains within the Coast Guard's discretion even once the bond is posted." *Ibid.* The court also determined that no statute or regulation limits the Coast Guard's discretion in any manner. See *ibid.*

The district court explained that the broader statutory context of APPS likewise shows that departure conditions are committed to the Coast Guard's discretion by law. The court observed that when

Congress gave the Coast Guard a range of enforcement tools, it "demonstrate[d] [its] recognition of the Coast Guard's particular expertise when it comes to investigating and prosecuting [APPS] violations." JA 031. And it held that under the "statutory and regulatory scheme that governs the Coast Guard's authority to order Customs to grant or deny departure clearance," the "Coast Guard appears to have complete discretion." JA 032. Indeed, "Congress intended to commit fully to the Coast Guard the matter of whether and under what circumstances" a ship detained under APPS must be released. JA 033.

The district court rejected plaintiffs' view that recognizing such broad agency discretion would unfairly burden members of the shipping industry. The court observed that its ruling would not preclude constitutional challenges. JA 040-041. And it emphasized that the vessels were suspected of having committed serious crimes for which they would not be held answerable if the Coast Guard were required to release them on the posting of a financial bond alone: the vessels could "avoid liability for APPS violations with impunity" by "simply posting a surety bond and then sailing away * * *." JA 041. Such a view of the

statute would be inconsistent with "Congress's clear intent (as manifest in the text, structure and purpose of the APPS) that the APPS be effectively enforced and that federal authorities be given broad discretion to do so." JA 042.

SUMMARY OF THE ARGUMENT

The Coast Guard's decision to let the *Agios Emilianos* and the *Stellar Wind* resume their voyages while under investigation for environmental crimes, after the vessels had made surety arrangements "satisfactory to the Secretary," 33 U.S.C.§ 1908(e), is not subject to judicial review. The district court lacked jurisdiction over this action. Plaintiffs' claims would in any event be unreviewable under the Administrative Procedure Act, as the district court correctly held, because Congress committed decisions about whether vessels can leave port during APPS investigations to agency discretion by law.

1. Neither plaintiffs' claims for injunctive relief nor their claims seeking to have the security agreements vacated are justiciable. Plaintiffs lack standing to seek an injunction against non-monetary departure conditions to be imposed in the future because they have suffered no injury that such an injunction could redress. Plaintiffs' past

security agreements cannot support injunctive relief. Nor can plaintiffs credibly assert that they will need to negotiate security agreements again in future; a litigant cannot claim standing based upon a likelihood of violating admittedly valid criminal laws, and plaintiffs' vessels will not be detained under APPS unless they again enter the United States with evidence that crimes were committed aboard.

Plaintiffs' claims that a court should vacate the security agreements they entered into before pleading guilty to APPS violations fail for lack of standing and because they are moot. First, the claims are not redressable. The parties' obligations under the agreements were fully performed once the prosecutions were completed and the criminal penalties paid, so vacatur now could not affect the parties' rights established under the agreements. Any chance that plaintiffs might obtain future relief from an order vacating the injunctions (for example, in a hypothetical future damages action against the United States) is too speculative to make their claims justiciable. And the claims are not saved by the "capable of repetition yet evading review" exception to mootness because plaintiffs cannot allege that their vessels are likely to

be detained for APPS violations in ports of the United States in the future.

2. Plaintiffs' claims would in any event be unreviewable under the APA, which excludes from review agency action that is "committed to agency discretion by law." 5 U.S.C. § 701(a)(2). The district court correctly held that the Coast Guard's decisions about whether to release a vessel detained for APPS violations, and under what conditions, are committed to agency discretion, and thus fall outside the scope of the APA.

Congress committed departure-clearance decisions to the agency's unreviewable discretion when it provided in Section 1908(e) that "[c]learance may be granted upon the filing of a bond or other surety satisfactory to the Secretary." By providing that the surety must be "satisfactory to the Secretary," Congress gave the agency absolute discretion to determine when a security agreement is acceptable. Congress also permitted, but did not require, the release of a vessel after a bond has been filed, and it provided no statutory criteria for deciding when a vessel should be cleared for release. The Fourth Circuit has accordingly held that under Section 1908(e), decisions about

departure conditions are committed to agency discretion by law. *Angelex Ltd. v. United States*, 723 F.3d 500 (4th Cir. 2013).

Plaintiffs are mistaken in contending that the phrase "bond or other surety satisfactory to the Secretary" authorizes only financial terms. A security agreement will often have non-monetary conditions, and the non-monetary conditions of departure-clearance agreements are indispensable. Financial terms secure the payment of criminal penalties, but without additional, non-monetary terms (such as the vessel owner's and operator's agreement to submit to the jurisdiction of a United States court), the vessel will sail away with no means for the United States to obtain a conviction and impose the penalties the agreement supposedly secures. A bond or surety "satisfactory to the Secretary" is therefore one that includes both a financial undertaking to pay criminal penalties and non-monetary conditions that give substance to the purely financial terms.

3. Plaintiffs misinterpret Section 1908(e) when they suggest that Customs, rather than the Coast Guard, exercises discretion under Section 1908(e). The district court correctly held that the Coast Guard determines whether a vessel should be released, and under what

conditions, while Customs actually grants the departure clearance. The district court's view gives meaning to every word of the statute, and it is plaintiffs, rather than the court, who misunderstand the legislative scheme.

Plaintiffs are also mistaken in complaining that the non-monetary conditions in the security agreements are unreasonable and burdensome. The non-monetary terms, without exception, are needed to ensure that the United States will not put its prosecution at risk if the ship is allowed to sail, but will have a fully effective substitute for the vessel's presence. The terms are also consistent with industry customs that govern the relationships between vessels and their crew.

Plaintiffs' view that departure conditions should be judicially reviewable under standards found in agency manuals and international law is also misplaced. The district court correctly held that none of the agency materials provides any guidance for whether, or when, a vessel held in port for APPS violations should be cleared to leave the United States. International law supports the view that departure-clearance conditions should be unreviewable. MARPOL is an international treaty and the United States, as a party to it, has a treaty obligation to provide

effective enforcement through its domestic legislation. Congress committed to the Coast Guard's discretion, by law, the statutory discretion to determine departure conditions under APPS. That flexibility ensures that the criminal provisions of APPS will be implemented effectively, and the district court correctly upheld the full range of the Coast Guard's Section 1908(e) authority.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo. See, *e.g.*, *Holland v. Bibeau Constr. Co.*, 774 F.3d 8, 12 (D.C. Cir 2014).

ARGUMENT

I. THIS ACTION SHOULD BE DISMISSED BECAUSE THE DISTRICT COURT LACKED JURISDICTION OVER BOTH THE PLAINTIFFS' ACTION FOR INJUNCTIVE RELIEF AND THEIR CLAIM THAT THE SETTLEMENT AGREEMENTS BETWEEN PLAINTIFFS AND THE COAST GUARD SHOULD BE VACATED.[8]

A. Plaintiffs lack standing to seek injunctive relief.

"To seek injunctive relief, a plaintiff must show that he is under threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). A plaintiff with standing has a direct interest in "the result of [the] case," rather than just "an interest in the legal issues presented," *Joseph v. U.S. Civil Service Comm'n*, 554 F.2d 1140, 1145 (D.C. Cir. 1977). Significantly for plaintiffs' claim for injunctive relief against the Coast

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[8] These jurisdictional issues are raised for the first time on appeal. In addressing them, the government assumes, contrary to its argument on the merits, that plaintiffs have stated a viable legal claim: "[T]he 'Supreme Court has made clear that when considering whether a plaintiff has Article III standing, a federal court must assume *arguendo* the merits of his or her legal claim.'" *Schnitzler v. United States*, 761 F.3d 33, 40 (D.C. Cir. 2014) (quoting *Parker v. District of Columbia*, 478 F.3d 370, 377 (D.C. Cir. 2007)).

Guard, "[a]llegations of possible future injury do not satisfy the requirements of Art[icle] III." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990). See also *Nat'l Ass'n of Home Builders v. EPA*, 667 F.3d 6, 13 (D.C. Cir. 2011) (litigants who "face only the *possibility* of regulation" lack standing to seek an injunction against government action); *Coalition for Mercury-Free Drugs v. Sebelius*, 671 F.3d 1275, 1280 (D.C. Cir. 2012) (plaintiffs lacked standing to challenge government's refusal to ban a vaccine preservative when they would refuse vaccines that contained the preservative).

Plaintiffs' complaint asked the district court to "[e]njoin the Coast Guard from demanding anything more than a surety bond or other financial surety for the granting of a departure clearance for any vessel" whose departure clearance might be withheld for an environmental-pollution investigation. JA 191. "Because plaintiffs seek only forward-looking injunctive * * * relief, 'past injuries alone are insufficient to establish standing' * * * ." *NB ex rel. Peacock v. District of Columbia*, 682 F.3d 77, 82 (D.C. Cir. 2012) (quoting *Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011). Plaintiffs have alleged no injury in fact that might support their standing to bring their injunctive claim. The *Agios*

Emilianos and the *Stellar Wind* have long since sailed, and the non-monetary conditions plaintiffs accepted as conditions of their departure from the United States are past injuries that cannot support standing.

The complaint contains no allegation that plaintiffs are likely to suffer a relevant injury in future, let alone the "certainly impending" injury Article III requires. *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1155 (2013). See also *Peacock*, 682 F.3d at 82 ("[P]laintiffs must show that they 'suffer[ ] an ongoing injury or face[ ] an immediate threat of injury.'") (second and third alterations in original). Standing cannot be based upon a hypothesis that the *Agios Emilianos*, the *Stellar Wind*, or any other vessel that plaintiffs own or operate might be subject to non-monetary departure conditions during a future voyage, because the Supreme Court has clarified that litigants cannot base standing upon speculative injuries predicated upon their own possible future violations of a valid criminal law.

In *O'Shea v. Littleton*, 414 U.S. 488 (1974), for example, protesters sought an injunction against county officials' allegedly discriminatory enforcement of criminal laws. The Supreme Court explained that because the protesters had not challenged the validity of any criminal

statute, it was obliged to assume that the parties would "conduct their activities within the law and so avoid prosecution and conviction as well as exposure to" the allegedly discriminatory conduct. *Id.* at 497. The protesters' contention that they might "again be arrested for and charged with violations of the criminal law" and subjected to the challenged discriminatory practices was not the type of "real and immediate threat of repeated injury" that could make their claims justiciable. *Id.* at 496. See also *City of L.A. v. Lyons*, 461 U.S. 95, 105 (1983) (individual lacked standing to seek injunction against police use of chokeholds when there was no "real and immediate threat that he would again be stopped for [an offense], by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part"); *Lane v. Williams*, 455 U.S. 624, 633 n.13 (1982) (challenges to criminal sentences already served were moot despite the chance that respondents might "again violate state law, [be] returned to prison," and suffer similar injuries, when "[r]espondents themselves are able — and indeed required by law — to prevent such a possibility from occurring"). Compare *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334 (2014) (discussing standing in a different

setting, where plaintiff seeks to challenge the constitutional validity of a criminal statute).

Plaintiffs here do not challenge the validity of the criminal provisions of APPS. Their claim for injunctive relief against the Coast Guard might be based upon a theory that a vessel they own or operate is imminently likely to commit an environmental crime or, at a minimum, to arrive in the United States with evidence that pollution controls have been bypassed; to be detained by authorities in the United States while the possible environmental crime is investigated; and to be presented with non-monetary conditions for a departure clearance. This chain of possible events is too speculative to amount to a certainly impending future injury. The vessel owners and operators here have no standing to seek an injunction.

This Court should dismiss the claim for injunctive relief for lack of jurisdiction.

B. Plaintiffs lack standing to seek an order vacating the security agreements, and their claim that the security agreements should be vacated is moot.

Redressability, as well as injury in fact, is a necessary element of standing. "Redressability examines whether the relief sought,

assuming that the court chooses to grant it, will likely alleviate the particularized injury" plaintiffs allege. *Microwave Acquisition Corp. v. FCC*, 145 F.3d 1410, 1413 (D.C. Cir. 1998). Redressability requires more than a chance that a plaintiff may obtain effective relief. "[I]t must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' " *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 43 (1976)).

Redressability can also affect mootness. "In general, a case becomes moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" *Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2013) (quoting *Larsen v. U.S. Navy*, 525 F.3d 1, 3 (D.C. Cir. 2008)). Redressability is relevant to mootness because when no live issues remain between the parties, "it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Service Emps. Int'l Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012) (internal quotation marks omitted). A federal court accordingly must "refrain from deciding [a case] if events have so transpired that the decision will neither

presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future." *LaRoque v. Holder*, 679 F.3d 905, 907 (D.C. Cir. 2012) (internal quotation marks omitted).

Plaintiffs here cannot show that this Court could redress their injuries by vacating the security agreements. The security agreements allowed the *Agios Emilianos* and the *Stellar Wind* to resume their voyages during the investigation of the environmental crimes committed aboard the vessels, and imposed obligations upon plaintiffs and the Coast Guard during the pendency of the criminal proceedings. In the *Agios Emilianos* security agreement, for example, Watervale Marine and Ilios agreed to post a surety bond to secure criminal or civil penalties, JA 088-090, to co-operate with the United States in securing the testimony of crewmembers, including leaving certain key witnesses in the United States, JA 090-091, and to stipulate to the authenticity of certain key documents (such as the Oil Record Book), JA 095-096. The Coast Guard and the United States agreed to return the bond to Watervale Marine and Ilios if no penalty was found to be appropriate, JA 089, to take reasonable measures to expedite the proceedings, including accepting judicial review of allegations of unreasonable delay,

JA 093, and to refrain from arresting the vessel or keeping it in port in connection with the pending criminal charges, JA 096. See also JA 123-130 (similar provisions for the *Stellar Wind*).

Vacating the security agreements would offer plaintiffs no relief because the agreements have no ongoing legal effect on the relationship between the parties. The parties' obligations under the agreements were fully discharged after the criminal penalties were paid. See JA 092 ("The 'duration of this agreement' is defined as 'when all criminal trials arising from and related to the facts of this case have been completed.'"). Plaintiffs' alleged past injuries are not redressable by an order vacating the agreements and, accordingly, cannot support standing. See, *e.g.*, *Cherry v. FCC*, 641 F.3d 494 (D.C. Cir. 2011). For the same reasons, vacating the security agreements would not "presently affect the parties' rights" under the agreements, *LaRoque*, 679 F.3d at 907, and to that extent the claim seeking vacatur is moot.

Plaintiffs likewise lack a "more-than-speculative chance" that an order vacating the agreements could grant them effectual future relief. *LaRoque*, 679 F.3d at 907. At most, a judicial decision invalidating the security agreements might perhaps form the basis of some future action

by plaintiffs against the Coast Guard or the United States. But where a court's ability to grant effectual relief depends on plaintiffs' success in a subsequent judicial proceeding, the proposed remedy is likely to be "unduly speculative" for purposes of mootness and standing. See *Daimler Trucks N. Am. LLC v. EPA*, 745 F.3d 1212, 1217 (D.C. Cir. 2013) (mootness); *University Med. Ctr. of S. Nev. v. Shalala*, 173 F.3d 438, 442 (D.C. Cir. 1999) (standing).

Plaintiffs' claim that the security agreements should be invalidated falls outside the mootness exception for claims that are capable of repetition, yet evading review. "To satisfy the exception, a party must demonstrate that * * * 'there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again.'" *Ralls Corp. v. Committee on Foreign Inv. in the U.S.,* 758 F.3d 296, 321 (D.C. Cir. 2014) (brackets in original) (quoting *Clarke v. United States*, 915 F.2d 699, 704 (D.C. Cir. 1990) (en banc). See also *Lyons*, 461 U.S. at 109 ("[T]he capable-of-repetition doctrine applies only in exceptional situations, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality."). As discussed above, plaintiffs cannot create

jurisdiction by speculating that vessels that they own or operate will again enter United States ports with evidence that environmental crimes have been committed aboard. And the chance that vessels owned by *other* entities may commit environmental crimes does not save plaintiffs' claims from mootness.

Nor can plaintiffs obtain standing on the ground that the Coast Guard's imposition of departure conditions under APPS would not otherwise be subject to judicial review. "[T]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing," *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 489 (1982), and the same is true of mootness. Rather than authorizing expedited review proceedings to allow for pre-departure review under these exigent circumstances, Congress instead provided an after-the-fact damages remedy if a vessel is thought to have been unreasonably detained. See 33 U.S.C. § 1904(h). That legislative choice strongly suggests that the departure conditions themselves are not reviewable.

II. THIS ACTION SHOULD BE DISMISSED BECAUSE DECISIONS ABOUT WHEN A VESSEL SHOULD BE CLEARED TO LEAVE BECAUSE IT HAS POSTED A "BOND OR OTHER SURETY SATISFACTORY TO THE SECRETARY" ARE COMMITTED TO THE COAST GUARD'S DISCRETION BY LAW.

The APA authorizes judicial review of administrative action "according to the provisions [of the Act], except to the extent that * * * agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). "Whether and to what extent a particular statute precludes judicial review is determined not only from its express language, but also from the structure of the statutory scheme, its objectives, its legislative history, and the nature of the administrative action involved." *Block v. Community Nutrition Inst.*, 467 U.S. 340, 345 (1984). See also *Sierra Club v. Jackson*, 648 F.3d 848, 855 (D.C Cir. 2011).

A. APPS commits decisions regarding departure conditions to the Department of Homeland Security's unreviewable discretion.

The decision whether, and to what extent, to agree to departure conditions for vessels suspected of environmental crimes is committed to agency discretion by law under 5 U.S.C. § 701(a)(2). That provision of the APA withdraws agency determinations from judicial review when

the agency acts under a statute "drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion," *Heckler v. Chaney*, 470 U.S. 821, 830 (1985), or "drawn in such broad terms that in a given case there is no law to apply," *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971). This Court has explained that "[a]gency actions in these circumstances are unreviewable because 'the courts have no legal norms pursuant to which to evaluate the challenged action, and thus no concrete limitations to impose on the agency's exercise of discretion.'" *Sierra Club*, 648 F.3d at 855 (quoting *Secretary of Labor v. Twentymile Coal Co.*, 456 F.3d 151, 156 (D.C. Cir. 2006)) (internal quotation marks omitted).

i. By its plain terms, Section 1908(e) grants the Secretary unreviewable discretion.

Congress in Section 1908(e) provided that a departure "[c]learance may be granted upon the filing of a bond or other surety satisfactory to the Secretary."

Decisions about whether and how to establish conditions "satisfactory to the Secretary" for a vessel's departure from a United States port, 33 U.S.C. § 1908(e), are committed to agency discretion by

law. When Congress authorized departure conditions under Section 1908(e) that are "satisfactory to the Secretary," it chose "a subjective standard (whether the agency thinks that a condition has been met)," rather than "an objective one (whether the condition in fact has been met)" to establish the scope of permissible agency action. *Drake v. FAA*, 291 F.3d 59, 72 (D.C. Cir. 2002). Subjective standards give an agency "virtually unfettered discretion" to exercise its statutory authority, because "[t]he only statutory reference point is the [agency decisionmaker's] own beliefs," *id.* at 71-72. And when Congress gives the agency itself discretion to determine when statutory criteria are satisfied, "a court has no meaningful standard against which to judge the agency's exercise of discretion, at least so long as the agency's action does not otherwise infringe some constitutional right or protection." *Id.* at 72. See also *Steenholdt v. FAA*, 314 F.3d 633, 639 (D.C. Cir. 2003) (determination that could be made "'at any time for any reason the Administrator considers appropriate'" was committed to agency discretion by law). Congress's decision to measure Section 1908(e) departure conditions by whether they are "satisfactory to the Secretary" reveals that it intended the agency's decision to be unreviewable.

Further, as the district court pointed out, Congress did not *require* the release of a vessel even after a satisfactory bond has been posted. See JA 030-031. Rather, "the statute and its attendant regulations are devoid of any other limits, requirements, or criteria that provide any guideposts by which a court can measure the Coast Guard's discretionary decision" to continue to withhold clearance. JA 030. In Section 1908(e), the district court recognized, Congress used the permissive "may"—"[c]learance *may* be granted upon the filing of a bond"— "coupled with 'absolutely no guidance' as to how the agency should exercise [its] discretion" to allow the vessel to leave or not. JA 031 (quoting *Robbins v. Reagan,* 780 F.2d 37, 45 (D.C. Cir. 1985)). With no meaningful statutory standards to guide judicial review, the court held, "the matter has been committed to agency discretion by law." *Ibid.*

The Coast Guard's exercise of discretion implicates areas in which the Executive Branch has categorically unreviewable discretion, a factor that further counsels against judicial review. The Coast Guard's determination of appropriate conditions is made in light of a pending criminal investigation and prosecution, and "the exercise of

prosecutorial discretion, at the very core of the executive function, has long been held presumptively unreviewable." *In re Sealed Case*, 131 F.3d 208, 214 (D.C. Cir. 1997). The Coast Guard's decision to hold a foreign-flagged vessel or allow it to resume its international journey has a foreign relations dimension as well, and foreign policy determinations may also be presumptively unreviewable under the APA. See *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State*, 104 F.3d 1349, 1353 (D.C. Cir. 1997). Although the Coast Guard, to be sure, is neither exercising prosecutorial discretion nor formulating foreign policy for the United States, its decisions regarding departure clearances involve the exercise of executive discretion in areas where the courts are reluctant to intrude.

The only court of appeals to consider the question has held that departure conditions negotiated under Section 1908(e) are not judicially reviewable because they are committed to agency discretion by law. *Angelex Ltd. v. United States*, 723 F.3d 500, 506-07 (4th Cir. 2013). The Fourth Circuit in *Angelex* explained that "[t]here are no specific guidelines as to when clearance should or should not be granted in APPS, and Congress did not 'outline (even in the broadest brushstrokes)

the parameters for what form or amount a bond or other surety should take.'" *Id.* at 507 (quoting *Giuseppe Bottiglieri Shipping Co. SPA v. United States*, 843 F. Supp. 2d 1241, 1248 (S.D. Ala. 2012)). Rather, the court held, the Coast Guard "can dictate the terms of any bond that it may accept" under Section 1908(e). *Ibid*. *Angelex* is correctly decided and this Court should adopt its reasoning as persuasive.[9]

ii. The Secretary's authority to require a "bond or other surety satisfactory to the Secretary" includes the authority to negotiate non-monetary conditions.

Plaintiffs contend that the Coast Guard's authority under Section 1908(e) is "strictly and expressly confined to financial conditions necessary to satisfy any potential fines or penalties under APPS," Br. 20, and that no non-monetary conditions may be included. But the view that a bond or surety "satisfactory to the Secretary" cannot contain non-monetary conditions is inconsistent with the statutory language and improbably cramped, and this Court should reject it.

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[9] Although the district court distinguished *Angelex* on the ground that the vessel in *Angelex* was detained in port during the litigation, see JA 024-025, that procedural consideration does not determine whether the Department of Homeland Security's discretion to set departure conditions is committed to agency discretion by law under 5 U.S.C. § 701(a)(2).

Plaintiff's proposed reading of the statutory text overlooks two important considerations. First, bonds and sureties ordinarily contain more than just the terms setting the amount and other aspects of the payment, and the security agreements here reasonably contain both monetary and non-monetary conditions.

Second, a bond "satisfactory to the Secretary" can contain any term relating to the security arrangement that the Secretary deems appropriate, and there is no reason to exclude non-financial terms that increase the likelihood that the vessel might have to perform its financial obligations, such as those the Coast Guard negotiated here. As the Fourth Circuit in *Angelex* pointed out, Section § 1908(e) "grants the Coast Guard broad discretion to deny bond altogether, and it can dictate the terms of any bond that it may accept." 723 F.3d at 507. Here, the financial bonds required to satisfy the anticipated criminal penalties for the *Agios Emilianos* and the *Stellar Wind* were the primary terms of the security agreements between plaintiffs and the Coast Guard, see JA 087-098, 122-131, but additional terms, such as the vessels' agreement to submit to the jurisdiction of a United States court, made it more likely that the United States would have an

opportunity to actually *impose* the criminal penalties. The district court pointed out that if the Coast Guard could do no more than negotiate the amount of a monetary bond, "then the people who staff, own, and operate cargo vessels could effectively avoid liability for [statutory anti-pollution] violations with impunity—by simply posting a surety bond and then sailing away—and in so doing, prevent the U.S. government from effectively investigating and prosecuting their offenses." JA 041. The non-monetary conditions make bond agreements "satisfactory to the Secretary" without altering the primarily financial nature of the bond, and they are critical to carrying out the purposes of APPS. 33 U.S.C. § 1908(e).

On this point, the district court misinterpreted Section 1908(e). The court agreed with plaintiffs that when Congress in Section 1908(e) authorized the Coast Guard to allow a vessel to depart upon filing a "bond or other surety satisfactory to the Secretary," it required the Coast Guard to choose "one type of financial condition among the range of similar options," JA 029, and did not authorize the Coast Guard to consider non-monetary conditions. See JA 028. See also JA 033 (district court's view that "the phrase 'satisfactory to the Secretary'

* * * reflects the Coast Guard's discretion to fix the *amount of* the bond or other surety") (emphasis added). But for the reasons explained above, when Congress authorized the Coast Guard to establish a bond or security "satisfactory to the Secretary," 33 U.S.C. § 1908(e), it gave the Coast Guard discretion to include non-monetary conditions to support the financial undertaking promised by the vessel.

B. Plaintiffs' criticisms of the district court are unfounded.

i. Plaintiffs misinterpret the relevant statutes.

For the first time on appeal, plaintiffs argue that the departure conditions established under Section 1908(e) are reviewable because United States Customs and Border Protection ("Customs"), rather than the Coast Guard, exercises the relevant discretion under the statute. See Br. 5-6, 11-14. This argument is waived because the district court had no opportunity to consider it and this Court should not address it in the first instance. See, *e.g.*, *Pettaway v. Teachers Ins. & Annuity Ass'n of Am.*, 644 F.3d 427, 437 (D.C. Cir. 2011) ("Ordinarily, in reviewing motions for summary judgment, the appellate court considers only those matters presented to the district court, disregarding additional

allegations raised for the first time on appeal.") (internal citation omitted).

Plaintiffs' contention is in any event flawed. As relevant here, Section 1908(e) provides as follows:

> If any ship subject to * * * MARPOL * * * may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary [of Homeland Security], shall refuse or revoke the clearance required by section 60105 of Title 46. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary [of Homeland Security].

The two statutory references to "the Secretary" denote the Secretary of Homeland Security, by virtue of the definition section of APPS, 33 U.S.C. § 1901(a)(11), which provides that "'Secretary' means the Secretary of the department in which the Coast Guard is operating." The Coast Guard was made part of the Department of Homeland Security when that agency was created in 2002. Homeland Security Act of 2002, Pub. L. No. 107-296, § 888, 116 Stat. 2135, 2249 (2002). The reference to the "Secretary of the Treasury" likewise denotes the Secretary of Homeland Security. Although Section 1908(e) has not yet been amended to reflect the transfer of relevant Customs functions to the Department of Homeland Security in 2002, see *id.* § 403, 116 Stat.

at 2178, the statute governing departure clearances cross-referenced in Section 1908(e), 46 U.S.C. § 60105, has been amended to reflect the change. See *id.* § 60105(a), (b), note.

The district court correctly explained that this language grants the Coast Guard authority to exercise all the discretion Section 1908(e) confers. When the Coast Guard determines that a vessel has provided a bond or surety "satisfactory to the Secretary," it directs Customs to grant the necessary departure clearance and Customs must comply (unless the vessel cannot satisfy criteria independently required by Customs). See JA 032 (discussing "the statutory and regulatory scheme that governs the Coast Guard's authority to order Customs to grant or deny departure clearance"). This distribution of administrative functions perfectly implements the language of Section 1908(e): Customs must ("shall") withhold departure clearance if a vessel may have committed environmental crimes, and it has permission to ("may") grant a clearance if Coast Guard informs it that a bond "satisfactory to the Secretary" has been filed.[10]

[10] "May" further confirms that Customs may have its own reasons for withholding a departure clearance, even after the Coast Guard has

Continued on next page.

Plaintiffs are thus mistaken in contending that the district court "made a fatal error" when the court concluded "that the Coast Guard is the agency that has authority to grant or deny a vessel's departure clearance," Br. 12. Their view of the statute fails to distinguish the authority to withhold clearance (which Congress conferred upon Customs in 46 U.S.C. § 60105), from the authority to decide whether clearance should be withheld or granted to a vessel that may have violated APPS, which rests with the Coast Guard under Section 1908(e). Far from committing error, the district court recognized that distinction when it held that the Coast Guard, rather than Customs, exercises discretion under Section 1908(e).

ii. The Coast Guard's non-monetary conditions are reasonable.

Plaintiffs protest in a footnote that certain provisions in the security agreements are particularly onerous, and the Coast Guard "effectively force[d]" plaintiffs to accept them. Br. at 21 n.20. But that complaint should be directed to Congress. Congress mandated the detention of vessels reasonably suspected of violating APPS, and

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negotiated an acceptable security agreement. See 19 C.F.R. 4.61 (Customs regulations implementing Section 60105).

Congress gave the Coast Guard discretion to negotiate for bond conditions (both monetary and non-monetary) that are "satisfactory to the Secretary." 33 U.S.C. § 1908(e). Vessel owners could avoid these difficulties for themselves in any event, by ensuring that their vessels obey international anti-pollution laws. Plaintiffs' objection to the security agreements "minimizes the fact that * * * the crew aboard Plaintiffs' vessels were suspected of serious violations of international and environmental law." JA 041.

The standard non-monetary conditions are in any event entirely reasonable and consistent with the customary arrangements between vessel owners and operators and crew. Conditions relating to crewmembers who would remain in the United States, for example, are equitable and provide prosecutors with necessary access to key witnesses in the criminal case. The government does not ordinarily detain crewmembers or require them to remain in the United States for any period of time. The crewmembers are not parties to any surety agreement and cannot be bound by it, and at the government's request, crewmembers are ordinarily assigned independent counsel (either retained counsel or federal public defenders) to represent their

interests. If crewmembers are ultimately asked to remain as material witnesses in the criminal case, counsel may petition for their release, usually in conjunction with a request for a deposition under Federal Rule of Criminal Procedure 15. Other crewmembers may choose to remain in the United States voluntarily. See, *e.g., United States v. Target Ship Mgmt. PTE Ltd.*, Crim. No. 11-368 (S.D. Ala. Jan. 13, 2012) (Doc. 77) (denying vessel operator's motion to take Rule 15 depositions because the crew wished to remain in the United States).

While crewmembers remain in the United States, the government reasonably requires the vessel owner or operator to provide them reasonable lodging, a meal allowance, health coverage, and wages. These terms merely substitute for the presence of the vessel, which would otherwise be available to house, feed, and compensate the crew.[11] And, like other standard security conditions, this provision has its

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[11] See generally International Labour Organization, *Maritime Labour Convention, 2006* (Aug. 20, 2013), for one reflection of industry customs in this regard. The Convention is available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::::P91_SECTION:MLC_A2. Although the United States is not a party to this International Labor Organization convention, nor to the repatriation convention cited in footnote 12, these international agreements shed light upon customary terms in the shipping industry that address the relationship between seamen and their employers.

genesis in the conduct of a vessel operator who responded to allegations of illegal conduct by attempting to abandon its non-United States crew far from their homes. See *Giuseppe Bottiglieri*, No. 12-59 (S.D. Ala., Feb. 7, 2012), Doc. 24-3, Ex. B, at 10-11 (operator notified eight crewmembers that their contracts were being rescinded and that all expenses, including lodging and food, would soon become their personal responsibility).

Similarly, by custom and by contract, the vessel owner or operator usually returns crewmembers to their own country of hire. See, *e.g.*, *Griffin v. Oceanic Contractors, Inc.,* 458 U.S. 564, 566 (1982) (describing seaman's contract to work on vessels in the North Sea, under which employer would pay for travel to and from the United States.)[12] Surety terms requiring repatriation alter only the timing of this obligation.

Other requirements are equally reasonable and necessary. Requiring vessel interests to provide a custodian to authenticate documents allows the custodian of records to leave with the ship, and

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[12] See also International Labour Organization, *Convention concerning the Repatriation of Seafarers (Revised)* (July 03, 1991), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312311:NO.

substitutes for the custodian's presence at trial. And as discussed above, no surety agreement is satisfactory unless, at a minimum, entities charged with crimes in the United States agree to jurisdiction in the United States courts if their ship is allowed to sail.

iii. The district court correctly applied the test for determining when agency action is committed to agency discretion.

Plaintiffs object that there is no "clear and convincing" evidence that Congress intended to preclude review of departure conditions under Section 1908. Br. 17. But that "standard [is] met, and the presumption favoring judicial review overcome, whenever the congressional intent to preclude judicial review is "'fairly discernible in the statutory scheme.'" *Block*, 467 U.S. at 351. The district court here correctly held, JA 042-043, that Congress in APPS gave the necessary indications that it intended to give the Coast Guard unreviewable discretion to set departure conditions.

Nor is there any basis for plaintiffs' concern (Br. 31-35) that the district court placed too much emphasis on the word "may" in concluding that it had no standards for judging the Coast Guard's discretion. The district court was well aware of this Court's precedents

construing "may," see JA 030-031, and it correctly held, in light of those precedents, that no standards constrained the exercise of discretion conferred by the use of "may" in Section 1908. Further, as explained above, the term "satisfactory to the Secretary" confers more discretion upon the Coast Guard than the district court acknowledged, and this phrase adds additional support to the court's holding.

iv. The district court correctly concluded that Coast Guard manuals and international law provide no meaningful standard for reviewing departure conditions.

The district court rejected plaintiffs' contentions, renewed in this Court (see Br. 22-29), that Coast Guard policies and international instruments supply law that limits the Coast Guard's discretion under Section 1908. As the court explained, "a careful reading of the cited sources reveals that none of them actually states that the Coast Guard *must* release a vessel" even on the posting of a bond. JA 037 (discussing documents cited at Br. 24-27). Rather, they all require the Coast Guard to ensure that a vessel posts a satisfactory bond before leaving the United States.

The Coast Guard Marine Safety Manual's statement that customs withholding is "not a general enforcement tool" for the agency, Br. 25

(quoting JA 038), is likewise consistent with the Coast Guard's approach to negotiating departure conditions under APPS. As discussed above, the Coast Guard negotiates non-monetary conditions to give substance to the monetary conditions, not to enforce other provisions of APPS or other statutes. Moreover, the district court recognized that "the Coast Guard regulates departure clearance in a variety of contexts" independently of APPS, for example, in situations arising under the Clean Water Act, the Marine Mammal Protection Act, and others. See JA 038. Given the broad applicability of departure conditions, the district court held, "flexibility is clearly warranted." *Ibid.*

Plaintiff's contention that the Coast Guard's actions under APPS are inconsistent with international law is also thoroughly unpersuasive. MARPOL is itself an international treaty, and it unambiguously requires member States to ensure that their domestic implementing legislation provides for meaningful sanctions. See, *e.g.*, MARPOL, Art. 4(2), 1340 U.N.T.S. at 186 ("[a]ny violation of the requirements" of MARPOL "within the jurisdiction of any Party * * * shall be prohibited and sanctions shall be established therefor under the law of that

Party"); see also *id.* Art. 4(4), 1340 U.N.T.S. at 186 (penalties imposed by a State party's domestic law must be "adequate in severity to discourage violations"); *id.* Art. 6(1), 1340 U.N.T.S. at 187 (States parties must enforce MARPOL "using all appropriate and practicable measures of detection and environmental monitoring," and "adequate procedures for * * * accumulation of evidence."). APPS implements MARPOL for the United States, and Congress's purpose (as well as the overarching anti-pollution objective of MARPOL) would be undermined, not served, if APPS is interpreted to allow vessels that have violated MARPOL requirements and APPS to sail away from the jurisdiction of the United States courts, leaving behind empty promises to pay penalties that the United States would have no means of imposing.

Nor did the Coast Guard's implementation of APPS conflict with other sources of international law besides MARPOL. Plaintiffs cite the United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 ("LOS Convention"), a treaty to which the United States is not at this time a party. Regardless of whether the relevant provisions

of the LOS Convention reflect customary international law, [13] there is no conflict between those provisions and the Coast Guard's actions here under APPS. Where, as here, an investigation of a foreign vessel indicates that there has been a violation of applicable rules that protect and preserve the marine environment, the LOS Convention provides that "release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security." *Id.* art. 226(1)(b), 1833 U.N.T.S. at 491. This provision is not by its terms limited to only financial conditions, and it is consistent with the conclusion that Congress intended for the Coast Guard to have discretion to determine the conditions on a bond or other security.[14]

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[13] Although many provisions of the LOS Convention (including those with respect to traditional uses of the oceans) reflect customary international law that binds the United States, not all of the convention's substantive provisions are recognized as customary international law. Plaintiffs are mistaken in failing to recognize this distinction. See Br. 27-28.

[14] Contrary to Plaintiff's contention, Br. 10 n.8, decisions of the International Tribunal for the Law of the Sea (ITLOS) are irrelevant to this appeal. ITLOS decisions bind only the parties to a particular dispute, not other States, and certainly not a State like the United States, which is not subject to the LOS Convention's dispute-settlement provisions. Moreover, even if the United States had been a party to the ITLOS *Volga* case cited by Plaintiffs, the decision is not on point: it

Continued on next page.

For the reasons discussed above, a bond or other financial security for paying penalties under APPS must provide a reasonable substitute for the presence of the vessel if the United States courts are to retain jurisdiction over the criminal case, and if the ship is not to sail away with the evidence of the crime. The bond securing the penalties may accordingly be supported by certain non-monetary conditions that make it possible for the penalties to be imposed. Nothing in Coast Guard policies or international law is in any way inconsistent with the United States' determination that a vessel's presence is essential until an acceptable bond or other security has been negotiated, at which point, under APPS, the vessel will be promptly released if it is otherwise compliant with applicable law.

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concerns LOS Convention article 73, which is phrased differently from article 226 and which concerns certain fisheries-related detentions, not pollution-related detentions.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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MARCH 2015

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(A)

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 11,495 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

s/*Anne Murphy*
ANNE MURPHY

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2015, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/*Anne Murphy*
ANNE MURPHY

ADDENDUM

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ANNEX 2

RESOLUTION MEPC.117(52)

Adopted on 15 October 2004

AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF 1978 RELATING TO THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973

(Revised Annex I of MARPOL 73/78)

THE MARINE ENVIRONMENT PROTECTION COMMITTEE,

RECALLING article 38(a) of the Convention on the International Maritime Organization concerning the functions of the Marine Environment Protection Committee (the Committee) conferred upon it by international conventions for the prevention and control of marine pollution,

NOTING article 16 of the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1973 Convention") and article VI of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1978 Protocol") which together specify the amendment procedure of the 1978 Protocol and confer upon the appropriate body of the Organization the function of considering and adopting amendments to the 1973 Convention, as modified by the 1978 Protocol (MARPOL 73/78),

HAVING CONSIDERED the text of the revised Annex I of MARPOL 73/78,

1. ADOPTS, in accordance with article 16(2)(b), (c) and (d) of the 1973 Convention, the revised Annex I of MARPOL 73/78, the text of which is set out at the annex to the present resolution, each regulation being subject to separate consideration by the Parties pursuant to article 16(2)(f)(ii) of the 1973 Convention;

2. DETERMINES, in accordance with article 16(2)(f)(iii) of the 1973 Convention, that the revised Annex I of MARPOL 73/78 shall be deemed to have been accepted on 1 July 2006, unless, prior to that date, not less than one-third of the Parties or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have communicated to the Organization their objection to the amendments;

3. INVITES the Parties to note that, in accordance with article 16(2)(g)(ii) of the 1973 Convention, the revised Annex I of MARPOL 73/78 shall enter into force on 1 January 2007 upon its acceptance in accordance with paragraph 2 above;

4. REQUESTS the Secretary-General, in conformity with article 16(2)(e) of the 1973 Convention, to transmit to all Parties to MARPOL 73/78 certified copies of the present resolution and the text of the revised Annex I of MARPOL 73/78 contained in the annex; and

5. REQUESTS FURTHER the Secretary-General to transmit copies of the present resolution and its annex to the Members of the Organization which are not Parties to MARPOL 73/78.

ANNEX

CHAPTER 1 - GENERAL

Regulation 1
Definitions

For the purposes of this Annex:

1 *Oil* means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than those petrochemicals which are subject to the provisions of Annex II of the present Convention) and, without limiting the generality of the foregoing, includes the substances listed in appendix I to this Annex.

2 *Crude oil* means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation and includes:

.1 crude oil from which certain distillate fractions may have been removed; and

.2 crude oil to which certain distillate fractions may have been added.

3 *Oily mixture* means a mixture with any oil content.

4 *Oil fuel* means any oil used as fuel in connection with the propulsion and auxiliary machinery of the ship in which such oil is carried.

5 *Oil tanker* means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers, any "NLS tanker" as defined in Annex II of the present Convention and any gas carrier as defined in regulation 3.20 of chapter II-1 of SOLAS 74 (as amended), when carrying a cargo or part cargo of oil in bulk.

6 *Crude oil tanker* means an oil tanker engaged in the trade of carrying crude oil.

7 *Product carrier* means an oil tanker engaged in the trade of carrying oil other than crude oil.

8 *Combination carrier* means a ship designed to carry either oil or solid cargoes in bulk.

9 *Major conversion*:

.1 means a conversion of a ship:

.1 which substantially alters the dimensions or carrying capacity of the ship; or

.2 which changes the type of the ship; or

.3 the intent of which in the opinion of the Administration is substantially to prolong its life; or

.4 which otherwise so alters the ship that, if it were a new ship, it would become subject to relevant provisions of the present Convention not applicable to it as an existing ship.

.2 Notwithstanding the provisions of this definition:

.1 conversion of an oil tanker of 20,000 tonnes deadweight and above delivered on or before 1 June 1982, as defined in regulation 1.28.3, to meet the requirements of regulation 18 of this Annex shall not be deemed to constitute a major conversion for the purpose of this Annex; and

.2 conversion of an oil tanker delivered before 6 July 1996, as defined in regulation 1.28.5, to meet the requirements of regulation 19 or 20 of this Annex shall not be deemed to constitute a major conversion for the purpose of this Annex.

10 *Nearest land*. The term *from the nearest land* means from the baseline from which the territorial sea of the territory in question is established in accordance with international law, except that, for the purposes of the present Convention "from the nearest land" off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in:

latitude 11°00' S, longitude 142°08' E
to a point in latitude 10°35' S, longitude 141°55' E,
thence to a point latitude 10°00' S, longitude 142°00' E,
thence to a point latitude 9°10' S, longitude 143°52' E,
thence to a point latitude 9°00' S, longitude 144°30' E,
thence to a point latitude 10°41' S, longitude 145°00' E,
thence to a point latitude 13°00' S, longitude 145°00' E,
thence to a point latitude 15°00' S, longitude 146°00' E,
thence to a point latitude 17°30' S, longitude 147°00' E,
thence to a point latitude 21°00' S, longitude 152°55' E,
thence to a point latitude 24°30' S, longitude 154°00' E,
thence to a point on the coast of Australia
in latitude 24°42' S, longitude 153°15' E.

11 *Special area* means a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by oil is required.

For the purposes of this Annex, the special areas are defined as follows:

.1 *the Mediterranean Sea area* means the Mediterranean Sea proper including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 005°36' W;

.2 *the Baltic Sea area* means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N;

.3 *the Black Sea area* means the Black Sea proper with the boundary between the Mediterranean Sea and the Black Sea constituted by the parallel 41° N;

.4 *the Red Sea area* means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°28.5' N, 043°19.6' E) and Husn Murad (12°40.4' N, 043°30.2' E);

.5 *the Gulfs area* means the sea area located north-west of the rhumb line between Ras al Hadd (22°30' N, 059°48' E) and Ras al Fasteh (25°04' N, 061° 25' E);

.6 *the Gulf of Aden area* means that part of the Gulf of Aden between the Red Sea and the Arabian Sea bounded to the west by the rhumb line between Ras si Ane (12°28.5'N, 043°19.6' E) and Husn Murad (12°40.4' N, 043°30.2' E) and to the east by the rhumb line between Ras Asir (11°50' N, 051°16.9' E) and the Ras Fartak (15°35' N, 052°13.8' E);

.7 *the Antarctic area* means the sea area south of latitude 60°S; and

.8 *the North West European waters* include the North Sea and its approaches, the Irish Sea and its approaches, the Celtic Sea, the English Channel and its approaches and part of the North East Atlantic immediately to the west of Ireland. The area is bounded by lines joining the following points:

48° 27' N on the French coast
48° 27' N; 006° 25' W
49° 52' N; 007° 44’ W
50° 30' N; 012° W
56° 30' N; 012° W
62° N; 003° W
62° N on the Norwegian coast
57° 44.8' N on the Danish and Swedish coasts

.9 *the Oman area of the Arabian Sea* means the sea area enclosed by the following coordinates:

22° 30.00' N; 059° 48.00' E
23° 47.27' N; 060° 35.73' E
22° 40.62' N; 062° 25.29' E
21° 47.40' N; 063° 22.22' E
20° 30.37' N; 062° 52.41' E
19° 45.90' N; 062° 25.97' E
18° 49.92' N; 062° 02.94' E
17° 44.36' N; 061° 05.53' E
16° 43.71' N; 060° 25.62' E
16° 03.90' N; 059° 32.24' E
15° 15.20' N; 058° 58.52' E
14° 36.93' N; 058° 10.23' E
14° 18.93' N; 057° 27.03' E
14° 11.53' N; 056° 53.75' E
13° 53.80' N; 056° 19.24' E

13° 45.86' N; 055° 54.53' E
14° 27.38' N; 054° 51.42' E
14° 40.10' N; 054° 27.35'E
14° 46.21' N; 054° 08.56' E
15° 20.74' N; 053° 38.33' E
15° 48.69' N; 053° 32.07' E
16° 23.02' N; 053° 14.82' E
16° 39.06' N; 053° 06.52' E

12 *Instantaneous rate of discharge of oil content* means the rate of discharge of oil in litres per hour at any instant divided by the speed of the ship in knots at the same instant.

13 *Tank* means an enclosed space which is formed by the permanent structure of a ship and which is designed for the carriage of liquid in bulk.

14 *Wing tank* means any tank adjacent to the side shell plating.

15 *Centre tank* means any tank inboard of a longitudinal bulkhead.

16 *Slop tank* means a tank specifically designated for the collection of tank drainings, tank washings and other oily mixtures.

17 *Clean ballast* means the ballast in a tank which since oil was last carried therein, has been so cleaned that effluent therefrom if it were discharged from a ship which is stationary into clean calm water on a clear day would not produce visible traces of oil on the surface of the water or on adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. If the ballast is discharged through an oil discharge monitoring and control system approved by the Administration, evidence based on such a system to the effect that the oil content of the effluent did not exceed 15 parts per million shall be determinative that the ballast was clean, notwithstanding the presence of visible traces.

18 *Segregated ballast* means the ballast water introduced into a tank which is completely separated from the cargo oil and oil fuel system and which is permanently allocated to the carriage of ballast or to the carriage of ballast or cargoes other than oil or noxious liquid substances as variously defined in the Annexes of the present Convention.

19 *Length (L)* means 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline. The length *(L)* shall be measured in metres.

20 *Forward and after perpendiculars* shall be taken at the forward and after ends of the length *(L)*. The forward perpendicular shall coincide with the foreside of the stem on the waterline on which the length is measured.

21 *Amidships* is at the middle of the length *(L)*.

22 *Breadth (B)* means the maximum breadth of the ship, measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material. The breadth *(B)* shall be measured in metres.

23 *Deadweight (DW)* means the difference in tonnes between the displacement of a ship in water of a relative density of 1.025 at the load waterline corresponding to the assigned summer freeboard and the lightweight of the ship.

24 *Lightweight* means the displacement of a ship in metric tons without cargo, fuel, lubricating oil, ballast water, fresh water and feed water in tanks, consumable stores, and passengers and crew and their effects.

25 *Permeability* of a space means the ratio of the volume within that space which is assumed to be occupied by water to the total volume of that space.

26 *Volumes and areas* in a ship shall be calculated in all cases to moulded lines.

27 *Anniversary date* means the day and the month of each year, which will correspond to the date of expiry of the International Oil Pollution Prevention Certificate.

28.1 *ship delivered on or before 31 December 1979* means a ship:

.1 for which the building contract is placed on or before 31 December 1975; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or before 30 June 1976; or

.3 the delivery of which is on or before 31 December 1979; or

.4 which has undergone a major conversion:

.1 for which the contract is placed on or before 31 December 1975; or

.2 in the absence of a contract, the construction work of which is begun on or before 30 June 1976; or

.3 which is completed on or before 31 December 1979.

28.2 *ship delivered after 31 December 1979* means a ship:

.1 for which the building contract is placed after 31 December 1975; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction after 30 June 1976; or

.3 the delivery of which is after 31 December 1979; or

.4 which has undergone a major conversion:

.1 for which the contract is placed after 31 December 1975; or

.2 in the absence of a contract, the construction work of which is begun after 30 June 1976; or

.3 which is completed after 31 December 1979.

28.3 *oil tanker delivered on or before 1 June 1982* means an oil tanker:

.1 for which the building contract is placed on or before 1 June 1979; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or before 1 January 1980; or

.3 the delivery of which is on or before 1 June 1982; or

.4 which has undergone a major conversion:

.1 for which the contract is placed on or before 1 June 1979; or

.2 in the absence of a contract, the construction work of which is begun on or before 1 January 1980; or

.3 which is completed on or before 1 June 1982

28.4 *oil tanker delivered after 1 June 1982* means an oil tanker:

.1 for which the building contract is placed after 1 June 1979; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction after 1 January 1980; or

.3 the delivery of which is after 1 June 1982; or

.4 which has undergone a major conversion:

.1 for which the contract is placed after 1 June 1979; or

.2 in the absence of a contract, the construction work of which is begun after 1 January 1980; or

.3 which is completed after 1 June 1982.

28.5 *oil tanker delivered before 6 July 1996* means an oil tanker:

.1 for which the building contract is placed before 6 July 1993; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction before 6 January 1994; or

.3 the delivery of which is before 6 July 1996; or

.4 which has undergone a major conversion:

.1 for which the contract is placed before 6 July 1993; or

.2 in the absence of a contract, the construction work of which is begun before 6 January 1994; or

.3 which is completed before 6 July 1996.

28.6 *oil tanker delivered on or after 6 July 1996* means an oil tanker:

.1 for which the building contract is placed on or after 6 July 1993; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after 6 January 1994; or

.3 the delivery of which is on or after 6 July 1996; or

.4 which has undergone a major conversion:

.1 for which the contract is placed on or after 6 July 1993; or

.2 in the absence of a contract, the construction work of which is begun on or after 6 January 1994; or

.3 which is completed on or after 6 July 1996.

28.7 *oil tanker delivered on or after 1 February 2002* means an oil tanker:

.1 for which the building contract is placed on or after 1 February 1999; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after 1 August 1999; or

.3 the delivery of which is on or after 1 February 2002; or

.4 which has undergone a major conversion:

.1 for which the contract is placed on or after 1 February 1999; or

.2 in the absence of a contract, the construction work of which is begun on or after 1 August 1999; or

.3 which is completed on or after 1 February 2002.

28.8 *oil tanker delivered on or after* 1 January 2010 means an oil tanker:

.1 for which the building contract is placed on or after 1 January 2007; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after 1 July 2007; or

.3 the delivery of which is on or after 1 January 2010; or

.4 which has undergone a major conversion:

.1 for which the contract is placed on or after 1 January 2007; or

.2 in the absence of a contract, the construction work of which is begun on or after 1 July 2007; or

.3 which is completed on or after 1 January 2010.

29 *Parts per million (ppm)* means parts of oil per million parts of water by volume.

30 *Constructed* means a ship the keel of which is laid or which is at a similar stage of construction.

Regulation 2
Application

1 Unless expressly provided otherwise, the provisions of this Annex shall apply to all ships.

2 In ships other than oil tankers fitted with cargo spaces which are constructed and utilized to carry oil in bulk of an aggregate capacity of 200 cubic metres or more, the requirements of regulations 16, 26.4, 29, 30, 31, 32, 34 and 36 of this Annex for oil tankers shall also apply to the construction and operation of those spaces, except that where such aggregate capacity is less than 1,000 cubic metres the requirements of regulation 34.6 of this Annex may apply in lieu of regulations 29, 31 and 32.

3 Where a cargo subject to the provisions of Annex II of the present Convention is carried in a cargo space of an oil tanker, the appropriate requirements of Annex II of the present Convention shall also apply.

4 The requirements of regulations 29, 31 and 32 of this Annex shall not apply to oil tankers carrying asphalt or other products subject to the provisions of this Annex, which through their physical properties inhibit effective product/water separation and monitoring, for which the control of discharge under regulation 34 of this Annex shall be effected by the retention of residues on board with discharge of all contaminated washings to reception facilities.

5 Subject to the provisions of paragraph 6 of this regulation, regulations 18.6 to 18.8 of this Annex shall not apply to an oil tanker delivered on or before 1 June 1982, as defined in regulation 1.28.3, solely engaged in specific trades between:

.1 ports or terminals within a State Party to the present Convention; or

.2 ports or terminals of States Parties to the present Convention, where:

.1 the voyage is entirely within a Special Area; or

.2 the voyage is entirely within other limits designated by the Organization.

6 The provisions of paragraph 5 of this regulation shall only apply when the ports or terminals where cargo is loaded on such voyages are provided with reception facilities adequate for the reception and treatment of all the ballast and tank washing water from oil tankers using them and all the following conditions are complied with:

.1 subject to the exceptions provided for in regulation 4 of this Annex, all ballast water, including clean ballast water, and tank washing residues are retained on board and transferred to the reception facilities and the appropriate entry in the Oil Record Book Part II referred to in regulation 36 of this Annex is endorsed by the competent Port State Authority;

.2 agreement has been reached between the Administration and the Governments of the Port States referred to in paragraphs 5.1 or 5.2 of this regulation concerning the use of an oil tanker delivered on or before 1 June 1982, as defined in regulation 1.28.3, for a specific trade;

.3 the adequacy of the reception facilities in accordance with the relevant provisions of this Annex at the ports or terminals referred to above, for the purpose of this regulation, is approved by the Governments of the States Parties to the present Convention within which such ports or terminals are situated; and

.4 the International Oil Pollution Prevention Certificate is endorsed to the effect that the oil tanker is solely engaged in such specific trade.

Regulation 3
Exemptions and waivers

1 Any ship such as hydrofoil, air-cushion vehicle, near-surface craft and submarine craft etc. whose constructional features are such as to render the application of any of the provisions of chapters 3 and 4 of this Annex relating to construction and equipment unreasonable or impracticable may be exempted by the Administration from such provisions, provided that the construction and equipment of that ship provides equivalent protection against pollution by oil, having regard to the service for which it is intended.

2 Particulars of any such exemption granted by the Administration shall be indicated in the Certificate referred to in regulation 7 of this Annex.

3 The Administration which allows any such exemption shall, as soon as possible, but not more than 90 days thereafter, communicate to the Organization particulars of same and the reasons therefore, which the Organization shall circulate to the Parties to the present Convention for their information and appropriate action, if any.

4 The Administration may waive the requirements of regulations 29, 31 and 32 of this Annex, for any oil tanker which engages exclusively on voyages both of 72 hours or less in duration and within 50 nautical miles from the nearest land, provided that the oil tanker is engaged exclusively in trades between ports or terminals within a State Party to the present Convention. Any such waiver shall be subject to the requirement that the oil tanker shall retain on board all oily mixtures for subsequent discharge to reception facilities and to the determination by the Administration that facilities available to receive such oily mixtures are adequate.

5 The Administration may waive the requirements of regulations 31 and 32 of this Annex for oil tankers other than those referred to in paragraph 4 of this regulation in cases where:

.1 the tanker is an oil tanker delivered on or before 1 June 1982, as defined in regulation 1.28.3, of 40,000 tonnes deadweight or above, as referred to in regulation 2.5 of this Annex, solely engaged in specific trades, and the conditions specified in regulation 2.6 of this Annex are complied with; or

.2 the tanker is engaged exclusively in one or more of the following categories of voyages:

.1 voyages within special areas; or

.2 voyages within 50 nautical miles from the nearest land outside special areas where the tanker is engaged in:

.1 trades between ports or terminals of a State Party to the present Convention; or

.2 restricted voyages as determined by the Administration, and of 72 hours or less in duration;

provided that all of the following conditions are complied with:

.3 all oily mixtures are retained on board for subsequent discharge to reception facilities;

.4 for voyages specified in paragraph 5.2.2 of this regulation, the Administration has determined that adequate reception facilities are available to receive such oily mixtures in those oil loading ports or terminals the tanker calls at;

.5 the International Oil Pollution Prevention Certificate, when required, is endorsed to the effect that the ship is exclusively engaged in one or more of the categories of voyages specified in paragraphs 5.2.1 and 5.2.2.2 of this regulation; and

.6 the quantity, time and port of discharge are recorded in the Oil Record Book.

Regulation 4
Exceptions

Regulations 15 and 34 of this Annex shall not apply to:

.1 the discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea; or

.2 the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:

.1 provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and

.2 except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or

.3 the discharge into the sea of substances containing oil, approved by the Administration, when being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

Regulation 5
Equivalents

1 The Administration may allow any fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by this Annex if such fitting, material, appliance or apparatus is at least as effective as that required by this Annex. This authority of the Administration shall not extend to substitution of operational methods to effect the control of discharge of oil as equivalent to those design and construction features which are prescribed by regulations in this Annex.

2 The Administration which allows a fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by this Annex shall communicate particulars thereof to the Organization for circulation to the Parties to the Convention for their information and appropriate action, if any.

CHAPTER 2 - SURVEYS AND CERTIFICATION

Regulation 6
Surveys

1 Every oil tanker of 150 gross tonnage and above, and every other ship of 400 gross tonnage and above shall be subject to the surveys specified below:

.1 an initial survey before the ship is put in service or before the Certificate required under regulation 7 of this Annex is issued for the first time, which shall include a complete survey of its structure, equipment, systems, fittings, arrangements and material in so far as the ship is covered by this Annex. This survey shall be such as to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of this Annex;

.2 a renewal survey at intervals specified by the Administration, but not exceeding 5 years, except where regulation 10.2.2, 10.5, 10.6 or 10.7 of this Annex is applicable. The renewal survey shall be such as to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with applicable requirements of this Annex;

.3 an intermediate survey within 3 months before or after the second anniversary date or within 3 months before or after the third anniversary date of the Certificate which shall take the place of one of the annual surveys specified in paragraph 1.4 of this regulation. The intermediate survey shall be such as to ensure that the equipment and associated pump and piping systems, including oil discharge monitoring and control systems, crude oil washing systems, oily-water separating equipment and oil filtering systems, fully comply with the applicable requirements of this Annex and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation 7 or 8 of this Annex;

.4 an annual survey within 3 months before or after each anniversary date of the Certificate, including a general inspection of the structure, equipment, systems, fittings, arrangements and material referred to in paragraph 1.1 of this regulation to ensure that they have been maintained in accordance with paragraphs 4.1 and 4.2 of this regulation and that they remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation 7 or 8 of this Annex; and

.5 an additional survey either general or partial, according to the circumstances, shall be made after a repair resulting from investigations prescribed in paragraph 4.3 of this regulation, or whenever any important repairs or renewals are made. The survey shall be such as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of such repairs or renewals are in all respects satisfactory and that the ship complies in all respects with the requirements of this Annex.

2 The Administration shall establish appropriate measures for ships which are not subject to the provisions of paragraph 1 of this regulation in order to ensure that the applicable provisions of this Annex are complied with.

3.1 Surveys of ships as regards the enforcement of the provisions of this Annex shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it. Such organizations shall comply with the guidelines adopted by the Organization by resolution A.739(18), as may be amended by the Organization, and the specifications adopted by the Organization by resolution A.789(19), as may be amended by the Organization, provided that such amendments are adopted, brought into force and take effect in accordance with the provisions of article 16 of the present Convention concerning the amendment procedures applicable to this Annex.

3.2 An Administration nominating surveyors or recognizing organizations to conduct surveys as set forth in paragraph 3.1 of this regulation shall, as a minimum, empower any nominated surveyor or recognized organization to:

.1 require repairs to a ship; and

.2 carry out surveys, if requested by the appropriate authorities of a port State.

The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties to the present Convention for the information of their officers.

3.3 When a nominated surveyor or recognized organization determines that the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate or is such that the ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment, such surveyor or organization shall immediately ensure that corrective action is taken and shall in due course notify the Administration. If such corrective action is not taken the Certificate shall be withdrawn and the Administration shall be notified immediately; and if the ship is in a port of another Party, the appropriate authorities of the port State shall also be notified immediately. When an officer of the Administration, a nominated surveyor or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation. When applicable, the Government of the port State concerned shall take such steps as will ensure that the ship shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the nearest appropriate repair yard available without presenting an unreasonable threat of harm to the marine environment.

3.4 In every case, the Administration concerned shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

4.1 The condition of the ship and its equipment shall be maintained to conform with the provisions of the present Convention to ensure that the ship in all respects will remain fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

4.2 After any survey of the ship under paragraph 1 of this regulation has been completed, no change shall be made in the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the sanction of the Administration, except the direct replacement of such equipment and fittings.

4.3 Whenever an accident occurs to a ship or a defect is discovered which substantially affects the integrity of the ship or the efficiency or completeness of its equipment covered by this Annex the master or owner of the ship shall report at the earliest opportunity to the Administration, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by paragraph 1 of this regulation is necessary. If the ship is in a port of another Party, the master or owner shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

Regulation 7
Issue or endorsement of certificate

1 An International Oil Pollution Prevention Certificate shall be issued, after an initial or renewal survey in accordance with the provisions of regulation 6 of this Annex, to any oil tanker of 150 gross tonnage and above and any other ships of 400 gross tonnage and above which are engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties to the present Convention.

2 Such certificate shall be issued or endorsed as appropriate either by the Administration or by any persons or organization duly authorized by it. In every case the Administration assumes full responsibility for the certificate.

Regulation 8
Issue or endorsement of certificate by another Government

1 The Government of a Party to the present Convention may, at the request of the Administration, cause a ship to be surveyed and, if satisfied that the provisions of this Annex are complied with, shall issue or authorize the issue of an International Oil Pollution Prevention Certificate to the ship and where appropriate, endorse or authorize the endorsement of that certificate on the ship in accordance with this Annex.

2 A copy of the certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

3 A certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as the certificate issued under regulation 7 of this Annex.

4 No International Oil Pollution Prevention Certificate shall be issued to a ship, which is entitled to fly the flag of a State, which is not a Party.

Regulation 9
Form of certificate

The International Oil Pollution Prevention Certificate shall be drawn up in the form corresponding to the model given in appendix II to this Annex and shall be at least in English, French or Spanish. If an official language of the issuing country is also used, this shall prevail in case of a dispute or discrepancy.

Regulation 10
Duration and validity of certificate

1 An International Oil Pollution Prevention Certificate shall be issued for a period specified by the Administration, which shall not exceed five years.

2.1 Notwithstanding the requirements of paragraph 1 of this regulation, when the renewal survey is completed within 3 months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of expiry of the existing certificate.

2.2 When the renewal survey is completed after the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of expiry of the existing certificate.

2.3 When the renewal survey is completed more than 3 months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of completion of the renewal survey.

3 If a certificate is issued for a period of less than 5 years, the Administration may extend the validity of the certificate beyond the expiry date to the maximum period specified in paragraph 1 of this regulation, provided that the surveys referred to in regulations 6.1.3 and 6.1.4 of this Annex applicable when a certificate is issued for a period of 5 years are carried out as appropriate.

4 If a renewal survey has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the person or organization authorized by the Administration may endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed 5 months from the expiry date.

5 If a ship at the time when a certificate expires is not in a port in which it is to be surveyed, the Administration may extend the period of validity of the certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No certificate shall be extended for a period longer than 3 months, and a ship to which an extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new certificate. When the renewal survey is completed, the new certificate shall be valid to a date not exceeding 5 years from the date of expiry of the existing certificate before the extension was granted.

6 A certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by the Administration for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new certificate shall be valid to a date not exceeding 5 years from the date of expiry of the existing certificate before the extension was granted.

7 In special circumstances, as determined by the Administration, a new certificate need not be dated from the date of expiry of the existing certificate as required by paragraphs 2.2, 5 or 6 of this regulation. In these special circumstances, the new certificate shall be valid to a date not exceeding 5 years from the date of completion of the renewal survey.

8 If an annual or intermediate survey is completed before the period specified in regulation 6 of this Annex, then:

.1 the anniversary date shown on the certificate shall be amended by endorsement to a date which shall not be more than 3 months later than the date on which the survey was completed;

.2 the subsequent annual or intermediate survey required by regulation 6.1 of this Annex shall be completed at the intervals prescribed by that regulation using the new anniversary date; and

.3 the expiry date may remain unchanged provided one or more annual or intermediate surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation 6.1 of this Annex are not exceeded.

9 A certificate issued under regulation 7 or 8 of this Annex shall cease to be valid in any of the following cases:

.1 if the relevant surveys are not completed within the periods specified under regulation 6.1 of this Annex;

.2 if the certificate is not endorsed in accordance with regulation 6.1.3 or 6.1.4 of this Annex; or

.3 upon transfer of the ship to the flag of another State. A new certificate shall only be issued when the Government issuing the new certificate is fully satisfied that the ship is in compliance with the requirements of regulations 6.4.1 and 6.4.2 of this Annex. In the case of a transfer between Parties, if requested within 3 months after the transfer has taken place, the Government of the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration copies of the certificate carried by the ship before the transfer and, if available, copies of the relevant survey reports.

Regulation 11

Port State control on operational requirements[*]

1 A ship when in a port or an offshore terminal of another Party is subject to inspection by officers duly authorized by such Party concerning operational requirements under this Annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by oil.

2 In the circumstances given in paragraph 1 of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation have been brought to order in accordance with the requirements of this Annex.

3 Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.

4 Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

[*] Refer to the Procedures for port State control, adopted by the Organization by resolution A.787(19) as amended by resolution A.882(21); see IMO publication, sales No. IMO-650E.

CHAPTER 3 - REQUIREMENTS FOR MACHINERY SPACES OF ALL SHIPS

PART A CONSTRUCTION

Regulation 12
Tanks for oil residues (sludge)

1 Every ship of 400 gross tonnage and above shall be provided with a tank or tanks of adequate capacity, having regard to the type of machinery and length of voyage, to receive the oil residues (sludge) which cannot be dealt with otherwise in accordance with the requirements of this Annex, such as those resulting from the purification of fuel and lubricating oils and oil leakages in the machinery spaces.

2 Piping to and from sludge tanks shall have no direct connection overboard, other than the standard discharge connection referred to in regulation 13.

3 In ships delivered after 31 December 1979, as defined in regulation 1.28.2, tanks for oil residues shall be designed and constructed so as to facilitate their cleaning and the discharge of residues to reception facilities. Ships delivered on or before 31 December 1979, as defined in regulation 1.28.1, shall comply with this requirement as far as is reasonable and practicable.

Regulation 13
Standard discharge connection

To enable pipes of reception facilities to be connected with the ship's discharge pipeline for residues from machinery bilges and from sludge tanks, both lines shall be fitted with a standard discharge connection in accordance with the following table:

Standard dimensions of flanges for discharge connections

Description	**Dimension**
Outside diameter	215 mm
Inner diameter	According to pipe outside diameter
Bolt circle diameter	183 mm
Slots in flange	6 holes 22 mm in diameter equidistantly placed on a bolt circle of the above diameter, slotted to the flange periphery. The slot width to be 22 mm
Flange thickness	20 mm
Bolts and nuts: quantity, diameter	6, each of 20 mm in diameter and of suitable length
The flange is designed to accept pipes up to a maximum internal diameter of 125 mm and shall be of steel or other equivalent material having a flat face. This flange, together with a gasket of oil-proof material, shall be suitable for a service pressure of 600 kPa.	

PART B EQUIPMENT

Regulation 14
Oil filtering equipment

1 Except as specified in paragraph 3 of this regulation any ship of 400 gross tonnage and above but less than 10,000 gross tonnage shall be fitted with oil filtering equipment complying with paragraph 6 of this regulation. Any such ship which may discharge into the sea ballast water retained in fuel oil tanks in accordance with regulation 16.2 shall comply with paragraph 2 of this regulation.

2 Except as specified in paragraph 3 of this regulation any ship of 10,000 gross tonnage and above shall be fitted with oil filtering equipment complying with paragraph 7 of this regulation.

3 Ships, such as hotel ships, storage vessels, etc., which are stationary except for non-cargo-carrying relocation voyages need not be provided with oil filtering equipment. Such ships shall be provided with a holding tank having a volume adequate, to the satisfaction of the Administration, for the total retention on board of the oily bilge water. All oily bilge water shall be retained on board for subsequent discharge to reception facilities.

4 The Administration shall ensure that ships of less than 400 gross tonnage are equipped, as far as practicable, to retain on board oil or oily mixtures or discharge them in accordance with the requirements of regulation 15.6 of this Annex.

5 The Administration may waive the requirements of paragraphs 1 and 2 of this regulation for:

.1 any ship engaged exclusively on voyages within special areas, or

.2 any ship certified under the International Code of Safety for High-Speed Craft (or otherwise within the scope of this Code with regard to size and design) engaged on a scheduled service with a turn-around time not exceeding 24 hours and covering also non-passenger/cargo-carrying relocation voyages for these ships,

.3 with regard to the provision of subparagraphs .1 and .2 above, the following conditions shall be complied with:

.1 the ship is fitted with a holding tank having a volume adequate, to the satisfaction of the Administration, for the total retention on board of the oily bilge water;

.2 all oily bilge water is retained on board for subsequent discharge to reception facilities;

.3 the Administration has determined that adequate reception facilities are available to receive such oily bilge water in a sufficient number of ports or terminals the ship calls at;

.4 the International Oil Pollution Prevention Certificate, when required, is endorsed to the effect that the ship is exclusively engaged on the voyages within special areas or has been accepted as a high-speed craft for the purpose of this regulation and the service is identified; and

.5 the quantity, time, and port of the discharge are recorded in the Oil Record Book Part I.

6 Oil filtering equipment referred to in paragraph 1 of this regulation shall be of a design approved by the Administration and shall be such as will ensure that any oily mixture discharged into the sea after passing through the system has an oil content not exceeding 15 parts per million. In considering the design of such equipment, the Administration shall have regard to the specification recommended by the Organization.*

7 Oil filtering equipment referred to in paragraph 2 of this regulation shall comply with paragraph 6 of this regulation. In addition, it shall be provided with alarm arrangement to indicate when this level cannot be maintained. The system shall also be provided with arrangements to ensure that any discharge of oily mixtures is automatically stopped when the oil content of the effluent exceeds 15 parts per million. In considering the design of such equipment and approvals, the Administration shall have regard to the specification recommended by the Organization.*

PART C CONTROL OF OPERATIONAL DISCHARGE OF OIL

Regulation 15
Control of discharge of oil

1 Subject to the provisions of regulation 4 of this annex and paragraphs 2, 3, and 6 of this regulation, any discharge into the sea of oil or oily mixtures from ships shall be prohibited.

A. Discharges outside special areas

2 Any discharge into the sea of oil or oily mixtures from ships of 400 gross tonnage and above shall be prohibited except when all the following conditions are satisfied:

.1 the ship is proceeding en route;

.2 the oily mixture is processed through an oil filtering equipment meeting the requirements of regulation 14 of this Annex;

.3 the oil content of the effluent without dilution does not exceed 15 parts per million;

* Refer to the Recommendation on International Performance and Test Specification for Oily-Water Separating Equipment and Oil Content Meters, adopted by the Organization by Assembly resolution A.393(X), or the Guidelines and specifications for Pollution Prevention equipment for Machinery space Bilges of Ships, adopted by the Marine Environment Protection Committee by resolution MEPC.60(33), or the revised guidelines and specification for pollution prevention equipment for machinery space bilges of ships, adopted by the Marine Environment Protection Committee by resolution MEPC.107(49).

.4 the oily mixture does not originate from cargo pump room bilges on oil tankers; and

.5 the oily mixture, in case of oil tankers, is not mixed with oil cargo residues.

B. Discharges in special areas

3 Any discharge into the sea of oil or oily mixtures from ships of 400 gross tonnage and above shall be prohibited except when all of the following conditions are satisfied:

.1 the ship is proceeding en route;

.2 the oily mixture is processed through an oil filtering equipment meeting the requirements of regulation 14.7 of this Annex;

.3 the oil content of the effluent without dilution does not exceed 15 parts per million;

.4 the oily mixture does not originate from cargo pump room bilges on oil tankers; and

.5 the oily mixture, in case of oil tankers, is not mixed with oil cargo residues.

4 In respect of the Antarctic area, any discharge into the sea of oil or oily mixtures from any ship shall be prohibited.

5 Nothing in this regulation shall prohibit a ship on a voyage only part of which is in a special area from discharging outside a special area in accordance with paragraphs 2 of this regulation.

C. Requirements for ships of less than 400 gross tonnage in all areas except the Antarctic area

6 In the case of a ship of less than 400 gross tonnage, oil and all oily mixtures shall either be retained on board for subsequent discharge to reception facilities or discharged into the sea in accordance with the following provisions :

.1 the ship is proceeding en route;

.2 the ship has in operation equipment of a design approved by the Administration that ensures that the oil content of the effluent without dilution does not exceed 15 parts per million;

.3 the oily mixture does not originate from cargo pump room bilges on oil tankers; and

.4 the oily mixture, in case of oil tankers, is not mixed with oil cargo residues.

D. General requirements

7 Whenever visible traces of oil are observed on or below the surface of the water in the immediate vicinity of a ship or its wake, Governments of Parties to the present Convention should, to the extent they are reasonably able to do so, promptly investigate the facts bearing on the issue of whether there has been a violation of the provisions of this regulation. The investigation should include, in particular, the wind and sea conditions, the track and speed of the ship, other possible sources of the visible traces in the vicinity, and any relevant oil discharge records.

8 No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.

9 The oil residues which cannot be discharged into the sea in compliance with this regulation shall be retained on board for subsequent discharge to reception facilities.

Regulation 16
Segregation of oil and water ballast and carriage of oil in forepeak tanks

1 Except as provided in paragraph 2 of this regulation, in ships delivered after 31 December 1979, as defined in regulation 1.28.2, of 4,000 gross tonnage and above other than oil tankers, and in oil tankers delivered after 31 December 1979, as defined in regulation 1.28.2, of 150 gross tonnage and above, no ballast water shall be carried in any oil fuel tank.

2 Where the need to carry large quantities of oil fuel render it necessary to carry ballast water which is not a clean ballast in any oil fuel tank, such ballast water shall be discharged to reception facilities or into the sea in compliance with regulation 15 of this Annex using the equipment specified in regulation 14.2 of this Annex, and an entry shall be made in the Oil Record Book to this effect.

3 In a ship of 400 gross tonnage and above, for which the building contract is placed after 1 January 1982 or, in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction after 1 July 1982, oil shall not be carried in a forepeak tank or a tank forward of the collision bulkhead.

4 All ships other than those subject to paragraphs 1 and 3 of this regulation shall comply with the provisions of those paragraphs as far as is reasonable and practicable.

Regulation 17
Oil Record Book, Part I - Machinery space operations

1 Every oil tanker of 150 gross tonnage and above and every ship of 400 gross tonnage and above other than an oil tanker shall be provided with an Oil Record Book Part I (Machinery Space Operations). The Oil Record Book, whether as a part of the ship's official log-book or otherwise, shall be in the Form specified in appendix III to this Annex.

2 The Oil Record Book Part I shall be completed on each occasion, on a tank-to-tank basis if appropriate, whenever any of the following machinery space operations takes place in the ship:

.1 ballasting or cleaning of oil fuel tanks;

.2 discharge of dirty ballast or cleaning water from oil fuel tanks;

.3 collection and disposal of oil residues (sludge and other oil residues);

.4 discharge overboard or disposal otherwise of bilge water which has accumulated in machinery spaces; and

.5 bunkering of fuel or bulk lubricating oil.

3 In the event of such discharge of oil or oily mixture as is referred to in regulation 4 of this Annex or in the event of accidental or other exceptional discharge of oil not excepted by that regulation, a statement shall be made in the Oil Record Book Part I of the circumstances of, and the reasons for, the discharge.

4 Each operation described in paragraph 2 of this regulation shall be fully recorded without delay in the Oil Record Book Part I, so that all entries in the book appropriate to that operation are completed. Each completed operation shall be signed by the officer or officers in charge of the operations concerned and each completed page shall be signed by the master of ship. The entries in the Oil Record Book Part I, for ships holding an International Oil Pollution Prevention Certificate, shall be at least in English, French or Spanish. Where entries in an official national language of the State whose flag the ship is entitled to fly are also used, this shall prevail in case of a dispute or discrepancy.

5 Any failure of the oil filtering equipment shall be recorded in the Oil Record Book Part I.

6 The Oil Record Book Part I, shall be kept in such a place as to be readily available for inspection at all reasonable times and, except in the case of unmanned ships under tow, shall be kept on board the ship. It shall be preserved for a period of three years after the last entry has been made.

7 The competent authority of the Government of a Party to the present Convention may inspect the Oil Record Book Part I on board any ship to which this Annex applies while the ship is in its port or offshore terminals and may make a copy of any entry in that book and may require the master of the ship to certify that the copy is a true copy of such entry. Any copy so made which has been certified by the master of the ship as a true copy of an entry in the ship's Oil Record Book Part I shall be made admissible in any judicial proceedings as evidence of the facts stated in the entry. The inspection of an Oil Record Book Part I and the taking of a certified copy by the competent authority under this paragraph shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

APPENDIX III

FORM OF OIL RECORD BOOK

OIL RECORD BOOK

PART I - Machinery space operations

(All Ships)

Name of Ship: .....

Distinctive number
or letters: .....

Gross tonnage: .....

Period from: ..... to: .....

Note: Oil Record Book Part I shall be provided to every oil tanker of 150 gross tonnage and above and every ship of 400 gross tonnage and above, other than oil tankers, to record relevant machinery space operations. For oil tankers, Oil Record Book Part II shall also be provided to record relevant cargo/ballast operations.

Introduction

The following pages of this section show a comprehensive list of items of machinery space operations which are, when appropriate, to be recorded in the Oil Record Book Part I in accordance with regulation 17 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). The items have been grouped into operational sections, each of which is denoted by a letter Code.

When making entries in the Oil Record Book Part I, the date, operational Code and item number shall be inserted in the appropriate Columns and the required particulars shall be recorded chronologically in the blank spaces.

Each completed operation shall be signed for and dated by the officer or officers in charge. The master of the Ship shall sign each completed page.

The Oil Record Book Part I contains many references to oil quantity. The limited accuracy of tank Measurement devices, temperature variations and clingage will affect the accuracy of these readings. The entries in the Oil Record Book Part I should be considered accordingly.

In the event of accidental or other exceptional discharge of oil statement shall be made in the Oil Record Book Part I of the circumstances of, and the reasons for, the discharge.

Any failure of the oil filtering equipment shall be noted in the Oil Record Book Part I.

The entries in the Oil Record Book Part I, for ships holding an IOPP Certificate, shall be at least in English, French or Spanish. Where entries in official language of the State whose flag the ship is entitled to fly are also used, this shall prevail in case of a dispute or discrepancy.

The Oil Record Book Part I shall be kept in such a place as to be readily available for inspection at all reasonable times and, except in the case of unmanned ships under tow, shall be kept on board the ship. It shall be preserved for a period of three years after the last entry has been made.

The competent authority of the Government of a Party to the Convention may inspect the Oil Record Book Part I on board any ship to which this Annex applies while the ship is in its port or offshore terminals and may make a copy of any entry in that book and may require the master of the ship to certify that the copy is a true copy of such entry. Any copy so made which has been certified by the master of the ship as a true copy of an entry in the Oil Record Book Part I shall be made admissible in any juridical proceedings as evidence of the facts stated in the entry. The inspection of an Oil Record Book Part I and the taking of a certified copy by the competent authority under this paragraph shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

LIST OF ITEMS TO BE RECORDED

(A) Ballasting or cleaning of oil fuel tanks

1. Identity of tank(s) ballasted.

2. Whether cleaned since they last contained oil and, if not, type of oil previously carried.

3. Cleaning process:

   .1 position of ship and time at the start and completion of cleaning;

   .2 identify tank(s) in which one or another method has been employed (rinsing through, steaming, cleaning with chemicals; type and quantity of chemicals used, in m^3);

   .3 identity of tank(s) into which cleaning water was transferred.

4. Ballasting:

   .1 position of ship and time at start and end of ballasting;

   .2 quantity of ballast if tanks are not cleaned, in m^3.

(B) Discharge of dirty ballast or cleaning water from oil fuel tanks referred to under Section A)

5. Identity of tank(s).

6. Position of ship at start of discharge.

7. Position of ship on completion of discharge.

8. Ship's speed(s) during discharge.

9. Method of discharge:

   .1 through 15 ppm equipment

   .2 to reception facilities.

10. Quantity discharged, in m^3.

(C) Collection and disposal of oil residues (sludge and other oil residues)

11. Collection of oil residues

Quantities of oil residues (sludge and other oil residues) retained on board. The quantity should be recorded weekly[1]: (This means that the quantity must be recorded once a week even if the voyage lasts more than one week)

.1 - identity of tank(s) ……

.2 - capacity of tank(s) ……..…… m^3

.3 - total quantity of retention ……..……. m^3

12. Methods of disposal of residue.

State quantity of oil residues disposed of, the tank(s) emptied and the quantity of contents retained in m^3:

.1 to reception facilities (identify port)[2];

.2 transferred to another (other) tank(s) (indicate tank(s) and the total content of tank(s))

.3 incinerated (indicate total time of operation);

.4 other method (state which).

(D) Non-automatic discharge overboard or disposal otherwise of bilge water which has accumulated in machinery spaces

13. Quantity discharged or disposed of, in cubic metres.[3]

14. Time of discharge or disposal (starts and stop).

15. Method of discharge or disposal:

.1 through 15 ppm equipment (state position at start and end);

.2 to reception facilities (identify port)[2];

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[1] Tanks listed in item 3.1 of form A and B of the supplement in the IOPP Certificate used for sludge.

[2] Ship's masters should obtain from the operator of the reception facilities, which includes barges and tank trucks, a receipt or certificate detailing the quantity of tank washings, dirty ballast, residues or oily mixtures transferred, together with the time and date of the transfer. This receipt or certificate, if attached to the Oil Record Book Part I, may aid the master of the ship in proving that his ship was not involved in an alleged pollution incident. The receipt or certificate should be kept together with the Oil Record Book Part I.

[3] In case of discharge or disposal of bilge water from holding tank(s), state identity and capacity of holding tank(s) and quantity retained in holding tank.

.3 transfer to slop tank or holding tank (indicate tank(s); state the total quantity retained in tank(s), in m^3).

(E) Automatic discharge overboard or disposal otherwise of bilge water which has accumulated in machinery spaces

16. Time and position of ship at which the system has been put into automatic mode of operation for discharge overboard, through 15 ppm equipment.

17. Time when the system has been put into automatic mode of operation for transfer of bilge water to holding tank (identify tank).

18. Time when the system has been put into manual operation.

(F) Condition of the oil filtering equipment

19. Time of system failure[4].

20. Time when system has been made operational.

21. Reasons for failure.

(G) Accidental or other exceptional discharges of oil

22. Time of occurrence.

23. Place or position of ship at time of occurrence.

24. Approximate quantity and type of oil.

25. Circumstances of discharge or escape, the reasons therefore and general remarks.

(H) Bunkering of fuel or bulk lubricating oil

26. Bunkering:

.1 Place of bunkering.

.2 Time of bunkering.

.3 Type and quantity of fuel oil and identity of tank(s) (state quantity added, in tonnes and total content of tank(s)).

.4 Type and quantity of lubricating oil and identity of tank(s) (state quantity added, in tonnes and total content of tank (s)).

[4] The condition of the oil filtering equipment covers also the alarm and automatic stopping devices, if applicable.

(I) Additional operational procedures and general remarks

Name of ship .....

Distinctive number or letters .....

MACHINERY SPACE OPERATIONS

Date	**Code** (letter)	**Item** (number)	**Record of operations/signature of officer in charge**

Signature of master .....

Department of Homeland Security
Delegation Number: 0170.1

DELEGATION TO THE COMMANDANT OF THE U.S. COAST GUARD

1. Purpose

This delegation vests authority in the Commandant of the United States Coast Guard to enforce and implement the statutory programs and responsibilities referenced herein.

2. Delegation

Pursuant to the authority vested in the Secretary of Homeland Security by law, including the Homeland Security Act of 2002, I hereby delegate to the Commandant of the Coast Guard authority to:

(1) Carry out the functions and responsibilities and exercise the authorities in the Coast Guard Authorization Act of 1996, Pub. L. 104-324.

(2) Carry out the functions and exercise the authority in the following sections of the Maritime Transportation Security Act of 2002, Pub. L. 107-295:

(a) Section 102(d) (Rulemaking requirements) as it relates to exercising authority delegated to the Commandant under title 46, United States Code and in accordance with DHS policies and directives governing approval for Federal Register documents;
(b) Section 103, relating to the negotiation of an international agreement that provides for a uniform, comprehensive, international system of identification for seafarers;
(c) Section 345, relating to the provision of advice and assistance to organizations in the Great Lakes region that are dedicated to lighthouse stewardship; and
(d) Section 406, relating to authorizing placement of commercial VHF communications equipment on real property under the administrative control of the Coast Guard, and providing VHF communications services to the Coast Guard at a discounted rate.

(3) Carry out the functions and exercise the authorities in sections 203(b), 203(d), and 213(g) of division c, title II, Public Law 105-277, which relate

Coast Guard Authorization Act of 1998, (Pub. L. 105-383), section 313, codified at 33 U.S.C. 1230(d).

(73) Carry out the functions in sections 104(i), 104(j), 311(b), 311(j) (2) and (3), 311(m)(2), 312, and 402(b)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*), as amended by the Oil Pollution Act of 1990 (August 18, 1990; Pub L. 101-380; 104 Stat. 484).

(74) Carry out the functions in the Intervention on the High Seas Act, 33 U.S.C. 1471 *et seq.* (Pub. L. 93-248) except section 13(a).

(75) Carry out the following powers and duties in the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501-1524):

(a) The authority to process applications for the issuance, transfer or amendment of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)) in coordination with the Administrator of the Maritime Administration.
(b) Carry out other functions and responsibilities in the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501-1524), except as reserved by the Secretary of Transportation in 49 C.F.R. § 1.44(o) and delegated by the Secretary of Transportation in 49 C.F.R. §§ 1.53(a)(3) and 1.66(aa).

(76) Carry out the functions in the International Navigational Rules Act of 1977 (Pub. L. 95-75, 91 Stat. 308, 33 U.S.C. 1601 *et seq.*).

(77) Carry out the functions in the Act to Prevent Pollution from Ships, 33 U.S.C. 1901 *et seq.* (October 21, 1980; Pub. L. 96-478; 94 Stat. 2297) except section 10(b) and (c) and except as limited by delegations made by the Secretary of Transportation in 49 C.F.R. § 1.47(n), § 1.52(c), and § 1.66(u).

(78) Carry out the functions and responsibilities and exercise the authorities in 33 U.S.C. 1908(b), that pertain to payments of civil penalties assessed for violations of the MARPOL Protocol, Annex IV to the Antarctic Protocol, or regulations issued thereunder, to persons who provide information leading to the assessment of such penalties.

(79) Carry out the functions in the Inland Navigational Rules Act of 1980 (Pub. L. 96-591, 33 U.S.C. 2001 *et seq.*).

(80) Carry out the functions in Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) in sections 1(b), 2(a), 2(b)(2), 2(c), 2(d)(2), 2(e)(2), 2(f), 2(g)(2), 3, 5(a)(2), 5(b)(1) and (3), 6, 7(a) (1) and (3), 7(b), 7(c), 7(d), 8(d), 8(f), 8(g), 8(h), 9, and 10(c), excepting that portion of section 2(b)(2) relating to